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Table of Contents

Explanation ................................................................................................ v

Title 48:

Chapter 1—Federal Acquisition Regulation (Continued) ............... 3

Finding Aids:

Table of CFR Titles and Chapters ....................................................... 571

Alphabetical List of Agencies Appearing in the CFR ...................... 591

Table of OMB Control Numbers ....................................................... 601

List of CFR Sections Affected .......................................................... 605
Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 48 CFR 52.000 refers to title 48, part 52, section 000.
Explaination

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

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

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

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

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

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The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, October 1, 2009), consult the “List of CFR Sections Affected (LSA),” which is issued monthly, and the “Cumulative List of Parts Affected,” which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

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

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires Federal agencies to display an OMB control number with their information collection request.
Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 2001, consult either the List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, or 1986–2000, published in eleven separate volumes. For the period beginning January 1, 2001, a “List of CFR Sections Affected” is published at the end of each CFR volume.

INTEGRITY OF THE LAW

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the heads of executive departments and agencies of the Federal Government. It is divided into 50 titles which represent broad areas of regulatory activity, and is further subdivided into 98 subchapters representing the organizational structure of the Federal Government. Each title contains parts relating to a single agency. Each part has been divided into chapters according to subject matter, and further divided into subchapters according to specificity of subject matter. Each section is identified by the “Title,” “Part,” “Subpart,” “Subchapter,” “Chapter,” and “Section” identification numbers.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.
October 1, 2009.
Title 48—Federal Acquisition Regulations System is composed of seven volumes. The chapters in these volumes are arranged as follows: Chapter 1 (parts 1 to 51), chapter 1 (parts 52 to 99), chapter 2 (parts 201 to 299), chapters 3 to 6, chapters 7 to 14, chapters 15 to 28 and chapter 29 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 2009.

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

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

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

For this volume, Michele Bugenhagen was Chief Editor. The Code of Federal Regulations publication program is under the direction of Michael L. White, assisted by Ann Worley.
CHAPTER 1—FEDERAL ACQUISITION
REGULATION (CONTINUED)

SUBCHAPTER H—CLAUSES AND FORMS

<table>
<thead>
<tr>
<th>Part</th>
<th>Solicitation provisions and contract clauses</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>52</td>
<td>Solicitation provisions and contract clauses</td>
<td>5</td>
</tr>
<tr>
<td>53</td>
<td>Forms</td>
<td>413</td>
</tr>
<tr>
<td>54–99</td>
<td>[Reserved]</td>
<td></td>
</tr>
</tbody>
</table>
SUBCHAPTER H—CLAUSES AND FORMS

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec. 52.000 Scope of part.

Subpart 52.1—Instructions for Using Provisions and Clauses

52.100 Scope of subpart.
52.101 Using part 52.
52.102 Incorporating provisions and clauses.
52.103 Identification of provisions and clauses.
52.104 Procedures for modifying and completing provisions and clauses.
52.105 Procedures for using alternates.
52.106 [Reserved]
52.107 Provisions and clauses prescribed in subpart 52.1.

Subpart 52.2—Text of Provisions and Clauses

52.200 Scope of subpart.
52.201 [Reserved]
52.202–1 Definitions.
52.203–1 [Reserved]
52.203–2 Certificate of Independent Price Determination.
52.203–3 Gratuities.
52.203–4 [Reserved]
52.203–5 Covenant Against Contingent Fees.
52.203–6 Restrictions on Subcontractor Sales to the Government.
52.203–7 Anti-Kickback Procedures.
52.203–8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.
52.203–9 [Reserved]
52.203–10 Price or Fee Adjustment for Illegal or Improper Activity.
52.203–11 Certification and Disclosure Regarding Payments To Influence Certain Federal Transactions.
52.203–12 Limitation on Payments To Influence Certain Federal Transactions.
52.203–13 Contractor code of business ethics and conduct.
52.203–14 Display of hotline poster(s).
52.204–1 Approval of Contract.
52.204–2 Security Requirements.
52.204–3 Taxpayer identification.
52.204–4 Printed or Copied Double-Sided on Recycled Paper.
52.204–5 Women-Owned Business (Other Than Small Business).
52.204–6 Data Universal Numbering System (DUNS) Number.
52.204–7 Central Contractor Registration.
52.204–8 Annual Representations and Certifications.
52.204–9 Personal Identity Verification of Contractor Personnel.
52.204–10 Reporting Subcontract Awards.
52.204–11 American Recovery and Reinvestment Act—Reporting Requirements.
52.205–52.206 [Reserved]
52.207–1 Notice of Standard Competition.
52.207–2 Notice of Streamlined Competition.
52.207–3 Right of First Refusal of Employment.
52.207–4 Economic Purchase Quantity—Supplies.
52.207–5 Option To Purchase Equipment.
52.208–1—52.208–3 [Reserved]
52.208–4 Vehicle Lease Payments.
52.208–5 Condition of Leased Vehicles.
52.208–6 Marking of Leased Vehicles.
52.208–7 Tagging of Leased Vehicles.
52.208–8 Required Sources for Helium and Helium Usage Data.
52.208–9 Contractor Use of Mandatory Sources of Supply or Services.
52.209–1 Qualification Requirements.
52.209–2 Prohibition on Contracting with Inverted Domestic Corporations—Representation.
52.209–3 First Article Approval—Contractor Testing.
52.209–4 First Article Approval—Government Testing.
52.209–5 Certification Regarding Responsibility Matters
52.209–6 Protecting the Government’s Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.
52.211–1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101–29.
52.211–2 Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST).
52.211–3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.
52.211–4 Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.
52.211–5 Material Requirements.
52.211–6 Brand name or equal.
52.211–7 Alternatives to Government-unique standards.
52.211–8 Time of Delivery.
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>52.211-9</td>
<td>Desired and Required Time of Delivery.</td>
</tr>
<tr>
<td>52.211-10</td>
<td>Commencement, Prosecution, and Completion of Work.</td>
</tr>
<tr>
<td>52.211-11</td>
<td>Liquidated Damages—Supplies, Services, or Research and Development.</td>
</tr>
<tr>
<td>52.211-12</td>
<td>Liquidated Damages—Construction.</td>
</tr>
<tr>
<td>52.211-13</td>
<td>Time Extensions.</td>
</tr>
<tr>
<td>52.211-15</td>
<td>Defense Priority and Allocation Requirements.</td>
</tr>
<tr>
<td>52.211-16</td>
<td>Variation in Quantity.</td>
</tr>
<tr>
<td>52.211-17</td>
<td>Delivery of Excess Quantities.</td>
</tr>
<tr>
<td>52.211-18</td>
<td>Variation in Estimated Quantity.</td>
</tr>
<tr>
<td>52.212-1</td>
<td>Instructions to Offerors—Commercial Items.</td>
</tr>
<tr>
<td>52.212-2</td>
<td>Evaluation—Commercial Items.</td>
</tr>
<tr>
<td>52.212-3</td>
<td>Offeror Representations and Certifications—Commercial Items.</td>
</tr>
<tr>
<td>52.212-4</td>
<td>Contract Terms and Conditions—Commercial Items.</td>
</tr>
<tr>
<td>52.212-5</td>
<td>Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.</td>
</tr>
<tr>
<td>52.212-6</td>
<td>Amendments to Invitations for Bids.</td>
</tr>
<tr>
<td>52.212-7</td>
<td>False Statements in Bids.</td>
</tr>
<tr>
<td>52.212-8</td>
<td>Explanation to Prospective Bidders.</td>
</tr>
<tr>
<td>52.212-9</td>
<td>Late Submissions, Modifications, and Withdrawals of Bids.</td>
</tr>
<tr>
<td>52.213-1</td>
<td>Fast Payment Procedure.</td>
</tr>
<tr>
<td>52.213-2</td>
<td>Invoices.</td>
</tr>
<tr>
<td>52.213-3</td>
<td>Notice to Supplier.</td>
</tr>
<tr>
<td>52.213-4</td>
<td>Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).</td>
</tr>
<tr>
<td>52.214-1</td>
<td>52.214-2</td>
</tr>
<tr>
<td>52.214-3</td>
<td>Amendments to Invitations for Bids.</td>
</tr>
<tr>
<td>52.214-4</td>
<td>False Statements in Bids.</td>
</tr>
<tr>
<td>52.214-5</td>
<td>Submission of Bids.</td>
</tr>
<tr>
<td>52.214-6</td>
<td>Explanation to Prospective Bidders.</td>
</tr>
<tr>
<td>52.214-7</td>
<td>Late Submissions, Modifications, and Withdrawals of Bids.</td>
</tr>
<tr>
<td>52.214-8</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>52.214-9</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>52.214-10</td>
<td>Contract Award—Sealed Bidding.</td>
</tr>
<tr>
<td>52.214-11</td>
<td>Preparation of Bids.</td>
</tr>
<tr>
<td>52.214-12</td>
<td>Telegraphic Bids.</td>
</tr>
<tr>
<td>52.214-13</td>
<td>Place of Performance—Sealed Bidding.</td>
</tr>
<tr>
<td>52.214-14</td>
<td>Period for Acceptance of Bids.</td>
</tr>
<tr>
<td>52.214-16</td>
<td>Minimum Bid Acceptance Period.</td>
</tr>
<tr>
<td>52.214-17</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>52.214-18</td>
<td>Preparation of Bids—Construction.</td>
</tr>
<tr>
<td>52.214-19</td>
<td>Contract Award—Sealed Bidding—Construction.</td>
</tr>
<tr>
<td>52.214-20</td>
<td>Bid Samples.</td>
</tr>
<tr>
<td>52.214-21</td>
<td>Descriptive Literature.</td>
</tr>
<tr>
<td>52.214-22</td>
<td>Evaluation of Bids for Multiple Awards.</td>
</tr>
<tr>
<td>52.214-23</td>
<td>Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding.</td>
</tr>
<tr>
<td>52.214-24</td>
<td>Multiple Technical Proposals.</td>
</tr>
<tr>
<td>52.214-25</td>
<td>Step Two of Two-Step Sealed Bidding.</td>
</tr>
<tr>
<td>52.214-26</td>
<td>Audit and Records—Sealed Bidding.</td>
</tr>
<tr>
<td>52.214-27</td>
<td>Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.</td>
</tr>
<tr>
<td>52.214-28</td>
<td>Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.</td>
</tr>
<tr>
<td>52.214-29</td>
<td>Order of Precedence—Sealed Bidding.</td>
</tr>
<tr>
<td>52.214-30</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>52.214-31</td>
<td>Facsimile Bids.</td>
</tr>
<tr>
<td>52.214-32</td>
<td>52.214-33</td>
</tr>
<tr>
<td>52.214-34</td>
<td>Submission of Offers in the English Language.</td>
</tr>
<tr>
<td>52.214-35</td>
<td>Submission of Offers in U.S. Currency.</td>
</tr>
<tr>
<td>52.215-1</td>
<td>Instructions to Offerors—Competitive Acquisition.</td>
</tr>
<tr>
<td>52.215-2</td>
<td>Audit and Records—Negotiation.</td>
</tr>
<tr>
<td>52.215-3</td>
<td>Request for Information or Solicitation for Planning Purposes.</td>
</tr>
<tr>
<td>52.215-4</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>52.215-5</td>
<td>Facsimile Proposals.</td>
</tr>
<tr>
<td>52.215-6</td>
<td>Place of Performance.</td>
</tr>
<tr>
<td>52.215-7</td>
<td>Annual Representations and Certifications—Negotiation.</td>
</tr>
<tr>
<td>52.215-8</td>
<td>Order of Precedence—Uniform Contract Format.</td>
</tr>
<tr>
<td>52.215-9</td>
<td>Changes or Additions to Make-or-Buy Program.</td>
</tr>
<tr>
<td>52.215-10</td>
<td>Price Reduction for Defective Cost or Pricing Data.</td>
</tr>
<tr>
<td>52.215-11</td>
<td>Price Reduction for Defective Cost or Pricing Data—Modifications.</td>
</tr>
<tr>
<td>52.215-12</td>
<td>Subcontractor Cost or Pricing Data.</td>
</tr>
<tr>
<td>52.215-13</td>
<td>Subcontractor Cost or Pricing Data—Modifications.</td>
</tr>
<tr>
<td>52.215-14</td>
<td>Integrity of Unit Prices.</td>
</tr>
<tr>
<td>52.215-15</td>
<td>Pension adjustments and asset reversions.</td>
</tr>
<tr>
<td>52.215-16</td>
<td>Facilities Capital Cost of Money.</td>
</tr>
<tr>
<td>52.215-17</td>
<td>Waiver of Facilities Capital Cost of Money.</td>
</tr>
<tr>
<td>52.215-18</td>
<td>Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.</td>
</tr>
<tr>
<td>52.215-19</td>
<td>Notification of Ownership Changes.</td>
</tr>
<tr>
<td>52.215-20</td>
<td>Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.</td>
</tr>
<tr>
<td>52.215-21</td>
<td>Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.</td>
</tr>
<tr>
<td>52.215-22</td>
<td>52.215-42</td>
</tr>
<tr>
<td>52.215-23</td>
<td>Type of Contract.</td>
</tr>
<tr>
<td>52.216-2</td>
<td>Economic Price Adjustment—Semistandard Supplies.</td>
</tr>
<tr>
<td>52.216-3</td>
<td>Economic Price Adjustment—Labor and Material.</td>
</tr>
<tr>
<td>52.216-4</td>
<td>Price Redetermination—Prospective.</td>
</tr>
<tr>
<td>52.216-6</td>
<td>Price Redetermination—Reactive.</td>
</tr>
<tr>
<td>52.216-7</td>
<td>Allowable Cost and Payment.</td>
</tr>
<tr>
<td>52.216-8</td>
<td>Fixed Fee.</td>
</tr>
</tbody>
</table>
Federal Acquisition Regulation

52.216-9 Fixed Fee—Construction.
52.216-10 Incentive Fee.
52.216-11 Cost Contract—No Fee.
52.216-12 Cost-Sharing Contract—No Fee.
52.216-13—52.216-14 [Reserved]
52.216-15 Predetermined Indirect Cost Rates.
52.216-16 Incentive Price Revision—Firm Target.
52.216-17 Incentive Price Revision—Successive Targets.
52.216-18 Ordering.
52.216-19 Order Limitations.
52.216-20 Definite Quantity.
52.216-21 Requirements.
52.216-22 Indefinite Quantity.
52.216-23 Execution and Commencement of Work.
52.216-24 Limitation of Government Liability.
52.216-25 Contract Definitization.
52.216-26 Payments of Allowable Costs Before Definitization.
52.216-27 Single or Multiple Awards.
52.216-28 Multiple Awards for Advisory and Assistance Services.
52.216-29 Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition With Adequate Price Competition.
52.217-1 [Reserved]
52.217-2 Cancellation Under Multiyear Contracts.
52.217-3 Evaluation Exclusive of Options.
52.217-5 Evaluation of Options.
52.217-6 Option for Increased Quantity.
52.217-7 Option for Increased Quantity—Separately Priced Line Item.
52.217-8 Option To Extend Services.
52.217-9 Option To Extend the Term of the Contract.
52.218 [Reserved]
52.219-1 Small Business Program Representations.
52.219-2 Equal Low Bids.
52.219-3 Notice of total HUBZone set-aside.
52.219-4 Notice of price evaluation preference for HUBZone small business concerns.
52.219-5 [Reserved]
52.219-6 Notice of Total Small Business Set-Aside.
52.219-7 Notice of Partial Small Business Set-Aside.
52.219-8 Utilization of small business concerns.
52.219-9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.
52.219-10 Incentive Subcontracting Program.
52.219-11 Special 8(a) Contract Conditions.
52.219-12 Special 8(a) Subcontract Conditions.
52.219-13 [Reserved]
52.219-14 Limitations on Subcontracting.
52.219-15 [Reserved]
52.219-16 Liquidated Damages—Subcontracting Plan.
52.219-17 Section 8(a) Award.
52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.
52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.
52.219-20 Notice of Emerging Small Business Set-Aside.
52.219-21 Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program.
52.219-22 Small Disadvantaged Business Status.
52.219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.
52.219-24 Small Disadvantaged Business Participation Program—Targets.
52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.
52.219-26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.
52.219-27 Post-Award Small Business Program Rerepresentation.
52.221 [Reserved]
52.222-1 Notice to the Government of Labor Disputes.
52.222-2 Payment for Overtime Premiums.
52.222-3 Convict Labor.
52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.
52.222-5 Davis-Bacon Act—Secondary site of the work.
52.222-6 Davis-Bacon Act.
52.222-7 Withholding of Funds.
52.222-8 Payrolls and Basic Records.
52.222-9 Apprentices and Trainees.
52.222-10 Compliance With Copeland Act Requirements.
52.222-11 Subcontracts (Labor Standards).
52.222-12 Contract Termination—Debarment.
52.222-13 Compliance With Davis-Bacon and Related Act Regulations.
52.222-14 Disputes Concerning Labor Standards.
52.222-15 Certification of Eligibility.
52.222-16 Approval of Wage Rates.
52.222-17 [Reserved]
52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.
<table>
<thead>
<tr>
<th>Section Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>52.226</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>52.226-1</td>
<td>Utilization of Indian Organizations and Indian-Owned Economic Enterprises.</td>
</tr>
<tr>
<td>52.226-2</td>
<td>Historically Black College or University and Minority Institution Representation.</td>
</tr>
<tr>
<td>52.226-3</td>
<td>Disaster or Emergency Area Representation.</td>
</tr>
<tr>
<td>52.226-4</td>
<td>Notice of Disaster or Emergency Area Set-Aside.</td>
</tr>
<tr>
<td>52.226-5</td>
<td>Restrictions on Subcontracting Outside Disaster or Emergency Area.</td>
</tr>
<tr>
<td>52.226-6</td>
<td>Promoting excess food donation to nonprofit organizations.</td>
</tr>
<tr>
<td>52.226-7</td>
<td>Authorization and Consent.</td>
</tr>
<tr>
<td>52.226-8</td>
<td>Notice and Assistance Regarding Patent and Copyright Infringement.</td>
</tr>
<tr>
<td>52.226-10</td>
<td>Waiver of Indemnity.</td>
</tr>
<tr>
<td>52.226-11</td>
<td>Royalty Information.</td>
</tr>
<tr>
<td>52.226-12</td>
<td>Patents—Notice of Government Licensee.</td>
</tr>
<tr>
<td>52.226-13</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>52.226-14</td>
<td>Refund of Royalties.</td>
</tr>
<tr>
<td>52.226-16</td>
<td>Patent Rights—Ownership by the Contractor.</td>
</tr>
<tr>
<td>52.226-17</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>52.226-19</td>
<td>Rights in Data—General.</td>
</tr>
<tr>
<td>52.226-20</td>
<td>Rights in Data—SHIR Program.</td>
</tr>
<tr>
<td>52.226-21</td>
<td>Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.</td>
</tr>
<tr>
<td>52.226-22</td>
<td>Major System—Minimum Rights.</td>
</tr>
<tr>
<td>52.226-23</td>
<td>Rights to Proposal Data (Technical).</td>
</tr>
<tr>
<td>52.226-24</td>
<td>Bid Guarantee.</td>
</tr>
<tr>
<td>52.226-25</td>
<td>Additional Bond Security.</td>
</tr>
<tr>
<td>52.226-26</td>
<td>Workers’ Compensation Insurance (Defense Base Act).</td>
</tr>
<tr>
<td>52.226-29</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>52.226-30</td>
<td>Insurance—Liability to Third Persons.</td>
</tr>
<tr>
<td>52.226-31</td>
<td>Liability and Insurance—Leased Motor Vehicles.</td>
</tr>
<tr>
<td>52.226-32</td>
<td>Cargo Insurance.</td>
</tr>
<tr>
<td>52.226-33</td>
<td>Vehicular and General Public Liability Insurance.</td>
</tr>
<tr>
<td>52.226-34</td>
<td>Pledges of Assets.</td>
</tr>
<tr>
<td>52.226-35</td>
<td>Prospective Subcontractor Requests for Bonds.</td>
</tr>
<tr>
<td>52.226-36</td>
<td>Alternative Payment Protections.</td>
</tr>
<tr>
<td>52.226-37</td>
<td>Irrevocable Letter of Credit.</td>
</tr>
<tr>
<td>52.226-38</td>
<td>Performance and Payment Bonds—Construction.</td>
</tr>
<tr>
<td>52.226-39</td>
<td>Performance and Payment Bonds—Other Than Construction.</td>
</tr>
<tr>
<td>52.226-40</td>
<td>State and Local Taxes.</td>
</tr>
<tr>
<td>52.226-41</td>
<td>North Carolina State and Local Sales and Use Tax.</td>
</tr>
<tr>
<td>52.226-42</td>
<td>Federal, State, and Local Taxes.</td>
</tr>
<tr>
<td>52.226-43</td>
<td>Federal, State, and Local (State and Local Adjustments).</td>
</tr>
<tr>
<td>52.226-44</td>
<td>Taxes—Foreign Fixed-Price Contracts.</td>
</tr>
<tr>
<td>52.226-45</td>
<td>Taxes—Fixed-Price Contracts With Foreign Governments.</td>
</tr>
<tr>
<td>52.226-46</td>
<td>Taxes—Foreign Cost-Reimbursement Contracts.</td>
</tr>
<tr>
<td>52.226-48</td>
<td>State of New Mexico Gross Receipts and Compensating Tax.</td>
</tr>
<tr>
<td>52.226-49</td>
<td>Cost Accounting Standards Notices and Certification.</td>
</tr>
<tr>
<td>52.226-50</td>
<td>Cost Accounting Standards.</td>
</tr>
<tr>
<td>52.226-51</td>
<td>Disclosure and Consistency of Cost Accounting Practices.</td>
</tr>
<tr>
<td>52.226-52</td>
<td>Consistency in Cost Accounting Practices.</td>
</tr>
<tr>
<td>52.226-53</td>
<td>Cost Accounting Standards—Educational Institution.</td>
</tr>
<tr>
<td>52.226-54</td>
<td>Administration of Cost Accounting Standards.</td>
</tr>
<tr>
<td>52.226-55</td>
<td>Proposal Disclosure—Cost Accounting Practice Changes.</td>
</tr>
<tr>
<td>52.226-56</td>
<td>Payments.</td>
</tr>
<tr>
<td>52.226-57</td>
<td>Payments Under Fixed-Price Research and Development Contracts.</td>
</tr>
<tr>
<td>52.226-58</td>
<td>Payments Under Personal Services Contracts.</td>
</tr>
<tr>
<td>52.226-59</td>
<td>Payments Under Transportation Contracts and Transportation-Related Services Contracts.</td>
</tr>
<tr>
<td>52.226-60</td>
<td>Payments Under Fixed-Price Construction Contracts.</td>
</tr>
</tbody>
</table>
52.232–8 Discounts for Prompt Payment.
52.232–9 Limitation on Withholding of Payments.
52.232–11 Extras.
52.232–12 Advance Payments.
52.232–13 Notice of Progress Payments.
52.232–15 Progress Payments Not Included.
52.232–16 Progress Payments.
52.232–17 Interest.
52.232–18 Availability of Funds.
52.232–19 Availability of Funds for the Next Fiscal Year.
52.232–20 Limitation of Cost.
52.232–21 [Reserved]
52.232–22 Limitation of Funds.
52.232–23 Assignment of Claims.
52.232–24 Prohibition of Assignment of Claims.
52.232–25 Prompt Payment.
52.232–27 Prompt Payment for Construction Contracts.
52.232–28 Invitation To Propose Performance-Based Payments.
52.232–29 Terms for Financing of Purchases of Commercial Items.
52.232–30 Installment Payments for Commercial Items.
52.232–31 Invitation To Propose Financing Terms.
52.232–32 Performance-Based Payments.
52.232–33 Payment by Electronic Funds Transfer—Central Contractor Registration.
52.232–34 Payment by Electronic Funds Transfer—Other than Central Contractor Registration.
52.232–35 Designation of Office for Government Receipt of Electronic Funds Transfer Information.
52.232–36 Payment by Third Party.
52.232–37 Multiple Payment Arrangements.
52.232–38 Submission of Electronic Funds Transfer Information with Offer.
52.233–1 Disputes.
52.233–2 Service of Protest.
52.233–3 Protest After Award.
52.233–4 Applicable Law for Breach of Contract Claim.
52.234–1 Industrial Resources Developed Under Defense Production Act Title III.
52.234–2 Notice of Earned Value Management System—Pre-Award IBR.
52.234–3 Notice of Earned Value Management System—Post Award IBR.
52.234–4 Earned Value Management System.
Federal Acquisition Regulation

Pt. 52

52.241 Utility Services Provisions and Clauses.
52.241–1 Electric Service Territory Compliance Representation.
52.241–2 Order of Precedence—Utilities.
52.241–3 Scope and Duration of Contract.
52.241–4 Change in Class of Service.
52.241–5 Contractor’s Facilities.
52.241–6 Service Provisions.
52.241–7 Change in Rates or Terms and Conditions of Service for Regulated Services.
52.241–8 Change in Rates or Terms and Conditions of Service for Unregulated Services.
52.241–9 Connection Charge.
52.241–10 Termination Liability.
52.241–11 Multiple Service Locations.
52.241–12 Nonrefundable, Nonrecurring Service Charge.
52.241–13 Capital Credits.
52.242–1 Notice of Intent To Disallow Costs.
52.242–2 Production Progress Reports.
52.242–3 Penalties for Unallowable Costs.
52.242–4 Certification of Final Indirect Costs.
52.242–5–52.242–12 [Reserved]
52.242–13 Bankruptcy.
52.242–14 Suspension of Work.
52.242–15 Stop-Work Order.
52.242–16 [Reserved]
52.242–17 Government Delay of Work.
52.243–1 Changes—Fixed-Price.
52.243–2 Changes—Cost-Reimbursement.
52.243–3 Changes—Time-and-Materials or Labor-Hours.
52.243–4 Changes.
52.243–5 Changes and Changed Conditions.
52.243–6 Change Order Accounting.
52.243–7 Notification of Changes.
52.244–1 [Reserved]
52.244–2 Subcontracts.
52.244–3 [Reserved]
52.244–4 Subcontractors and outside associates and consultants (Architect-engineer services).
52.244–5 Competition in Subcontracting.
52.244–6 Subcontracts for Commercial Items.
52.245–1 Government Property.
52.245–2 Government Property Installation Operation Services.
52.245–3–52.245–8 [Reserved]
52.245–9 Use and Charges.
52.246–1 Contractor Inspection Requirements.
52.246–2 Inspection of Supplies—Fixed-Price.
52.246–3 Inspection of Supplies—Cost-Reimbursement.
52.246–4 Inspection of Services—Fixed-Price.
52.246–5 Inspection of Services—Cost-Reimbursement.
52.246–6 Inspection—Time-and-Material and Labor-Hour.
52.246–7 Inspection of Research and Development—Fixed-Price.
52.246–8 Inspection of Research and Development—Cost-Reimbursement.
52.246–9 Inspection of Research and Development (Short Form).
52.246–10 [Reserved]
52.246–11 Higher-Level Contract Quality Requirement.
52.246–12 Inspection of Construction.
52.246–13 Inspection—Dismantling, Demolition, or Removal of Improvements.
52.246–14 Inspection of Transportation.
52.246–15 Certificate of Conformance.
52.246–16 Responsibility for Supplies.
52.246–17 Warranty of Supplies of a Noncomplex Nature.
52.246–18 Warranty of Supplies of a Complex Nature.
52.246–19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria.
52.246–20 Warranty of Services.
52.246–21 Warranty of Construction.
52.246–22 [Reserved]
52.246–23 Limitation of Liability.
52.246–24 Limitation of Liability—High-Value Items.
52.246–25 Limitation of Liability—Services.
52.247–1 Commercial Bill of Lading Notifications.
52.247–2 Permits, Authorities, or Franchises.
52.247–3 Capability To Perform a Contract for the Relocation of a Federal Office.
52.247–4 Inspection of Shipping and Receiving Facilities.
52.247–5 Familiarization With Conditions.
52.247–6 Financial Statement.
52.247–7 Freight Excluded.
52.247–8 Estimated Weights or Quantities Not Guaranteed.
52.247–9 Agreed Weight—General Freight.
52.247–10 Net Weight—General Freight.
52.247–11 Net Weight—Household Goods or Office Furniture.
52.247–12 Supervision, Labor, or Materials.
52.247–13 Accessorial Services—Moving Contracts.
52.247–14 Contractor Responsibility for Receipt of Shipment.
52.247–15 Contractor Responsibility for Loading and Unloading.
52.247–16 Contractor Responsibility for Returning Undelivered Freight.
52.247–17 Charges.
52.247–18 Multiple Shipments.
52.247–19 Stopping in Transit for Partial Unloading.
52.247–20 Estimated Quantities or Weights for Evaluation of Offers.
52.247–21 Contractor Liability for Personal Injury and/or Property Damage.
52.247–22 Contractor Liability for Loss of and/or Damage to Freight Other Than Household Goods.
52.247–23 Contractor Liability for Loss of and/or Damage to Household Goods.
52.247-24 Advance Notice by the Government.
52.247-25 Government-Furnished Equipment With or Without Operators.
52.247-26 Government Direction and Marking.
52.247-27 Contract Not Affected by Oral Agreement.
52.247-28 Contractor’s Invoices.
52.247-29 F.o.b. Origin.
52.247-30 F.o.b. Origin, Contractor’s Facility.
52.247-32 F.o.b. Origin, Freight Prepaid.
52.247-33 F.o.b. Origin, With Differentials.
52.247-34 F.o.b. Destination.
52.247-35 F.o.b. Destination, Within Consignee’s Premises.
52.247-36 F.a.s. Vessel, Port of Shipment.
52.247-37 F.o.b. Vessel, Port of Shipment.
52.247-38 F.o.b. Inland Carrier, Point of Exportation.
52.247-39 F.o.b. Inland Point, Country of Importation.
52.247-40 Ex Dock, Pier, or Warehouse, Port of Importation.
52.247-41 C.& f. f. Destination.
52.247-42 C.i.f. Destination.
52.247-43 F.o.b. Designated Air Carrier’s Terminal, Point of Exportation.
52.247-44 F.o.b. Designated Air Carrier’s Terminal, Point of Importation.
52.247-45 F.o.b. Origin and/or F.o.b. Destination Evaluation.
52.247-46 Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers.
52.247-48 F.o.b. Destination—Evidence of Shipment.
52.247-49 Destination Unknown.
52.247-50 No Evaluation of Transportation Costs.
52.247-51 Evaluation of Export Offers.
52.247-52 Clearance and Documentation Requirements—Shipments to DOD Air or Water Terminal Transshipment Points.
52.247-53 Freight Classification Description.
52.247-54 [Reserved]
52.247-56 Transit Arrangements.
52.247-57 Transportation Transit Privilege Credits.
52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments.
52.247-60 Guaranteed Shipping Characteristics.
52.247-62 Specific Quantities Unknown.
52.247-63 Preference for U.S.-Flag Air Carriers.
52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.
52.247-66 Returnable Cylinders.
52.247-67 Submission of Transportation Documents for Audit.
52.247-68 Report of Shipment (REPSHIP).
52.248-1 Value Engineering.
52.248-2 Value Engineering—Architect-Engineer.
52.248-3 Value Engineering—Construction.
52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form).
52.249-2 Termination for Convenience of the Government (Fixed-Price).
52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).
52.249-4 Termination for Convenience of the Government (Services) (Short Form).
52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).
52.249-6 Termination (Cost-Reimbursement).
52.249-7 Termination (Fixed-Price Architect-Engineer).
52.249-8 Default (Fixed-Price Supply and Service).
52.249-9 Default (Fixed-Price Research and Development).
52.249-10 Default (Fixed-Price Construction).
52.249-11 [Reserved]
52.249-12 Termination (Personal Services).
52.249-13 [Reserved]
52.249-14 Excusable Delays.
52.250-1 Indemnification Under Public Law 85-804.
52.250-2 SAFETY Act Coverage Not Applicable.
52.250-3 SAFETY Act Block Designation/Certification.
52.250-4 SAFETY Act Pre-qualification Designation Notice.
52.250-5 SAFETY Act—Equitable Adjustment.
52.251-1 Government Supply Sources.
52.251-2 Interagency Fleet Management System Vehicles and Related Services.
52.252-1 Solicitation Provisions Incorporated by Reference.
52.252-2 Clauses Incorporated by Reference.
52.252-3 Alterations in Solicitation.
52.252-4 Alterations in Contract.
52.252-5 Authorized Deviations in Provisions.
52.252-6 Authorized Deviations in Clauses.
52.253-1 Computer Generated Forms.

Subpart 52.3—Provision and Clause Matrix

52.300 Scope of subpart.
52.301 Solicitation provisions and contract clauses (Matrix).
52.000 Scope of part.

This part (a) gives instructions for using provisions and clauses in solicitations and/or contracts, (b) sets forth the solicitation provisions and contract clauses prescribed by this regulation, and (c) presents a matrix listing the FAR provisions and clauses applicable to each principal contract type and/or purpose (e.g., fixed-price supply, cost-reimbursement research and development).

Subpart 52.1—Instructions for Using Provisions and Clauses

52.100 Scope of subpart.

This subpart (a) gives instructions for using part 52, including the explanation and use of provision and clause numbers, prescriptions, prefaces, and the matrix; (b) prescribes procedures for incorporating, identifying, and modifying provisions and clauses in solicitations and contracts, and for using alternates; and (c) describes the derivation of FAR provisions and clauses.

52.101 Using part 52.

(a) Definition. Modification, as used in this subpart, means a minor change in the details of a provision or clause that is specifically authorized by the FAR and does not alter the substance of the provision or clause (see 52.104).

(b) Numbering—(1) FAR provisions and clauses. Subpart 52.2 sets forth the texts of all FAR provisions and clauses, each in its own separate subsection. The subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR. Each FAR provision or clause is uniquely identified. All FAR provision and clause numbers begin with “52.2,” since the text of all FAR provisions and clauses appear in subpart 52.2. The next two digits of the provision or clause number correspond to the number of the FAR subject part in which the provision or clause is prescribed. The FAR provision or clause number is then completed by a hyphen and a sequential number assigned within each section of subpart 52.2. The following example illustrates the makeup of the FAR provision or clause number:

(b) Numbering—(1) FAR provisions and clauses. Subpart 52.2 sets forth the texts of all FAR provisions and clauses, each in its own separate subsection. The subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR. Each FAR provision or clause is uniquely identified. All FAR provision and clause numbers begin with “52.2,” since the text of all FAR provisions and clauses appear in subpart 52.2. The next two digits of the provision or clause number correspond to the number of the FAR subject part in which the provision or clause is prescribed. The FAR provision or clause number is then completed by a hyphen and a sequential number assigned within each section of subpart 52.2. The following example illustrates the makeup of the FAR provision or clause number:

(2) Provisions or clauses that supplement the FAR. (i) Provisions or clauses that supplement the FAR are—

(A) Prescribed and included in authorized agency acquisition regulations issued within an agency to satisfy the specific needs of the agency as a whole;

(B) Prescribed and included in a regulation issued by a suborganization of an agency to satisfy the needs of that particular suborganization; or

(C) Developed for use at a suborganizational level of an agency, not meant for repetitive use, but intended to meet the needs of an individual acquisition and, thus, impractical to include in either an agency or suborganization acquisition regulation. (See 1.301(c).)

(ii) Supplemental provisions or clauses published in agency acquisition regulations shall be in full text and the prescription for the use of each shall be included. Supplemental provisions or clauses published in agency acquisition regulations shall be numbered in the same manner in which FAR provisions and clauses are numbered except that—

(A) If it is included in an agency acquisition regulation that is published in the Federal Register and is codified in Title 48, Code of Federal Regulations (48 CFR), the number shall be preceded by the chapter number within 48 CFR assigned by the CFR staff; and

(B) The sequential number shall be “70” or a higher number (see 1.303).

(iii) The sequential number at the end of the number of a provision or clause that supplements the FAR, like its counterpart at the end of any FAR provision or clause number, indicates
the subsection location of the provision or clause in subpart 52.2 of the agency acquisition regulation that contains its full text. If, for example, an agency acquisition regulation contains only one provision followed by only one clause supplementing the FAR in its section 52.236 (Construction and Architect-Engineer Contracts), then the sequential numbers would be “70” for the provision and “71” for the clause.

(c) Prescriptions. Each provision or clause in subpart 52.2 is prescribed at that place in the FAR text where the subject matter of the provision or clause receives its primary treatment. The prescription includes all conditions, requirements, and instructions for using the provision or clause and its alternates, if any. The provision or clause may be referred to in other FAR locations.

(d) Introductory text. Within subpart 52.2, the introductory text of each provision or clause includes a cross-reference to the location in the FAR subject text that prescribes its use.

(e) Matrix. (1) The matrix in subpart 52.3 contains a column for each principal type and/or purpose of contract (e.g., fixed-price supply, cost reimbursement research and development). The matrix lists the—
   (i) Required solicitation provisions;
   (ii) Required-when-applicable solicitation provisions;
   (iii) Optional solicitation provisions;
   (iv) Required contract clauses;
   (v) Required-when-applicable contract clauses; and
   (vi) Optional contract clauses.
   (2) For each provision or clause listed, the matrix provides information on—
      (i) Whether incorporation by reference is or is not authorized (see 52.102);
      (ii) The section of the Uniform Contract Format (UCF) in which it is to be located, if it is used in an acquisition that is subject to the UCF;
      (iii) Its number;
      (iv) The citation of the FAR text that prescribes its use; and
      (v) Its title.
   (3) Since the matrix does not provide sufficient information to determine the applicability of a provision or clause in the “required-when-applicable” and “optional” categories, contracting officers shall refer to the FAR text (cited in the matrix) that prescribes its use.

   (4) The FAR matrix may be reproduced at agency levels, and at subordinate levels, for the purpose of supplementing it with agency-developed provisions and clauses. The resulting consolidated matrices may be included in agency acquisition regulations.

(f) Dates. Since they are subject to revision from time to time, all provisions, clauses, and alternates are dated; e.g., (DEC 1983). To avoid questions concerning which version of any provision, clause, or alternate is operative in any given solicitation or contract, its date shall be included whether it is incorporated by reference or in full text.

52.103 Identification of provisions and clauses.

(a) Whenever any FAR provision or clause is used without deviation in a solicitation or contract, whether it is incorporated by reference or in full text, it shall be identified by number, title, and date. This identification shall also be used if the FAR provision or clause is used with an authorized deviation, except that the contracting officer shall then insert "(DEVIA TION)" after the date. Solicited firms and contractors will be advised of the meaning of this insertion through the use of the

(1) provision at 52.252–5, Authorized Deviations in Provisions, or (2) clause at 52.252–6, Authorized Deviations in Clauses. The above mentioned provision and clause are prescribed in 52.107 (e) and (f).

(b) Any provision or clause that supplements the FAR whether it is incorporated by reference or in full text shall be clearly identified by number, title, date, and name of the regulation. When a supplemental provision or clause is used with an authorized deviation, insert "(DEVIA TION)" after the name of the regulation.

(c) A provision or clause of the type described in 52.101(b)(2)(i)(C) shall be identified by the title, date, and the name of the agency or suborganization within the agency that developed it.

(d) Except for provisions or clauses covered by 52.103(c), the following hypothetical examples illustrate how a provision or clause that supplements the FAR shall be identified when it is incorporated in solicitations and/or contracts by reference or in full text:

(1) If part 14 (Sealed Bidding) of the X Agency Acquisition Regulation, published in the FEDERAL REGISTER and codified as Chapter 99 in 48 CFR, prescribes the use of a provision entitled "Bid Envelopes," dated October 1983, and that provision is sequentially the first provision or clause appearing in Section 52.214 of the X Agency Acquisition Regulation, then the identification of that provision shall be "9952.214–70—Bid Envelopes (OCT 1983)."

(2) Assume that Y, a major organizational element of the X Agency, is authorized to issue the Y Acquisition Regulation, which is not published in the FEDERAL REGISTER and codified in 48 CFR. If part 36 (Construction and Architect-Engineer Contracts) of the Y Acquisition Regulation prescribes the use of a clause entitled "Refrigerated
52.104

Display Cases,” dated March 1983, pertaining to a specialized type of construction work, and that clause is sequentially the second provision or clause appearing in Section 52.236 of the Y Acquisition Regulation, then the identification of that clause shall be “52.236–71—Refrigerated Display Cases (MAR 1983)—Y Acquisition Regulation.”


52.104 Procedures for modifying and completing provisions and clauses.

(a) The contracting officer must not modify provisions and clauses unless the FAR authorizes their modification. For example—

(1) “The contracting officer may use a period shorter than 60 days (but not less than 30 days) in paragraph (x) of the clause”; or

(2) “The contracting officer may substitute the words ‘task order’ for the word ‘Schedule’ wherever that word appears in the clause.”

(b) When modifying provisions or clauses incorporated by reference, insert the changed wording directly below the title of the provision or clause identifying to the lowest level necessary (e.g., paragraph, sentence, word), to clearly indicate what is being modified.

(c) When modifying provisions or clauses incorporated in full text, modify the language directly by substituting the changed wording as permitted.

(d) When completing blanks in provisions or clauses incorporated by reference, insert the fill-in information in full text, insert the fill-in information in the blanks of the provision or clause.


52.107 Provisions and clauses prescribed in subpart 52.1.

52.107 Provisions and clauses prescribed in subpart 52.1.

(a) The contracting officer shall insert the provision at 52.252–1, Solicitation Provisions Incorporated by Reference, in solicitations in order to incorporate provisions by reference.

(b) The contracting officer shall insert the clause at 52.252–2, Clauses Incorporated by Reference, in solicitations and contracts in order to incorporate clauses by reference.

(c) The contracting officer shall insert the provision at 52.252–3, Alterations in Solicitation, in solicitations in order to revise or supplement, as necessary, other parts of the solicitation phase only, except for any provision authorized for use with a deviation.

(d) The contracting officer shall insert the clause at 52.252–4, Alterations in Contract, in solicitations and contracts in order to revise or supplement, as necessary, other parts of the contract, or parts of the solicitations that apply to the contract phase, except for...
any clause authorized for use with a deviation.

(e) The contracting officer shall insert the provision at 52.252–5, Authorized Deviations in Provisions, in solicitations that include any FAR or supplemental provision with an authorized deviation. Whenever any FAR or supplemental provision is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the provision when it is used without deviation, include regulation name for any supplemental provision, except that the contracting officer shall insert “(DEVIATION)” after the date of the provision.

(f) The contracting officer shall insert the clause at 52.252–6, Authorized Deviations in Clauses, in solicitations and contracts that include any FAR or supplemental clause with an authorized deviation. Whenever any FAR or supplemental clause is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the clause when it is used without deviation, include regulation name for any supplemental clause, except that the contracting officer shall insert “(DEVIATION)” after the date of the clause.


Subpart 52.2—Text of Provisions and Clauses

52.200 Scope of subpart.

This subpart sets forth the text of all FAR provisions and clauses (see 52.101(b)(1)) and gives a cross-reference to the location in the FAR that prescribes the provision or clause.

[65 FR 36016, June 6, 2000]

52.202–1 Definitions.

As prescribed in 2.201, insert the following clause:

DEFINITIONS (JUL 2004)

(a) When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—

17
certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above]

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(End of provision)


52.203–3 Gratuities.

As prescribed in 3.202, insert the following clause:

GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative—

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled—

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)


52.203–4 [Reserved]

52.203–5 Covenant Against Contingent Fees.

As prescribed in 3.404, insert the following clause:

COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) Bona fide agency, as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

Bona fide employee, as used in this clause, means a person, employed by a contractor and subject to the contractor’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

Contingent fee, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

Improper influence, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

Federal Acquisition Regulation

52.203-6 Restrictions on Subcontractor Sales to the Government.

As prescribed in 3.503-2, insert the following clause:

RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

(End of clause)

Alternate I (OCT 1995). As prescribed in 3.503-2, substitute the following paragraph in place of paragraph (b) of the basic clause:

(b) The prohibition in paragraph (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial items, the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial items.


52.203-7 Anti-Kickback Procedures.

As prescribed in 3.502-3, insert the following clause:

ANTI-KICKBACK PROCEDURES (JUL 1995)

(a) Definitions.

Kickback, as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

Person, as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

Prime contract, as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

Prime Contractor, as used in this clause, means a person who has entered into a prime contract with the United States.

Prime Contractor employee, as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

Subcontract, as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

Subcontractor, as used in this clause, means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract.

Subcontractor employee, as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
52.203–8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.

As prescribed in 3.104–9(a), insert the following clause:

CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 422) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106), the Government may—

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
(2) Rescind the contract with respect to which—

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either—

(A) Exchanging the information covered by such subsections for anything of value; or
(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(End of clause)

52.203–9 [Reserved]

52.203–10 Price or Fee Adjustment for Illegal or Improper Activity.

As prescribed in 3.104–9(b) insert the following clause:

PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be—

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or “fee floor” specified in the contract;
(3) For cost-plus-award-fee contracts—

(i) The base fee established in the contract at the time of contract award;
(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

For fixed-price-incentive contracts, the Government may—

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
(ii) If an immediate adjustment to the contract target price and contract target profit

20
Federal Acquisition Regulation

52.203–12 Limitation on Payments to Influence Certain Federal Transactions.

As prescribed in 3.808(b), insert the following clause:

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)

(a) Definitions. As used in this clause—

Agency means executive agency as defined in Federal Acquisition Regulation (FAR) 2.101.

Covered Federal action means any of the following actions:

(1) Awarding any Federal contract.
(2) Making any Federal grant.
(3) Making any Federal loan.
(4) Entering into any cooperative agreement.
(5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement. Indian tribe and tribal organization have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an
officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

Local government means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of governmental duties and powers, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

Officer or employee of an agency includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

Person means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

Reasonable payment means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

Recipient includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

State means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition. 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352, the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352, the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contract, the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term appropriated funds does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) Exceptions. The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) Agency and legislative liaison by Contractor employees. (i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—
Federal Acquisition Regulation

52.203-12

(A) The qualities and characteristics (including individual demonstrations) of the person’s products or services, conditions or terms of sale, and service capabilities; or
(B) The person's products or services for an agency's use.

(ii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action:

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(1) If the Contractor did not obtain a declaration, including the certification and disclosure pursuant to paragraph (d) of the provision at FAR 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrants, including the individuals performing the services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) Penalties. (1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty to prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) Subcontracts. (1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding $100,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontract disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontract certification shall be retained in the subcontract file of the awarding Contractor.
52.203–13

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding $100,000.

(End of clause)

[72 FR 46331, Aug. 17, 2007]

52.203–13 Contractor Code of Business Ethics and Conduct.

As prescribed in 3.1004(a), insert the following clause:

CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2008)

(a) Definitions. As used in this clause—

Agent means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

Full cooperation—(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors’ and investigators’ request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require—

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from—

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

Principal means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager; head of a subsidiary, division, or business segment; and similar positions).

Subcontract means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

Subcontractor means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) Code of business ethics and conduct. (1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall—

(i) Have a written code of business ethics and conduct;

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) The Contractor shall—

(i) Exercise due diligence to prevent and detect criminal conduct; and

(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period.

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a
practical manner the Contractor’s standards and procedures and other aspects of the Contractor’s business ethics awareness and compliance program and internal control system for conducting effective training programs and otherwise disseminating information appropriate to an individual’s respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor’s principals and employees, and as appropriate, the Contractor’s agents and subcontractors.

(2) An internal control system.

(i) The Contractor’s internal control system shall—

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor’s internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor’s code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor’s code of business ethics and conduct and the special requirements of Government contracting, including—

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontractor thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729–3733).

(1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies’ contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(i) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(i) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) Subcontracts. (1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of $5,000,000 and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violations of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(End of clause)

Federal Acquisition Regulation 52.203–14

Display of Hotline Poster(s)

As prescribed in 3.1004(b), insert the following clause:

DISPLAY OF HOTLINE POSTER(S) (DEC 2007)

(a) Definition.

United States, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) Display of fraud hotline poster(s). Except as provided in paragraph (c)

As prescribed in 3.907–7, use the following clause:

WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAR 2009)


(b) The Contractor shall include the substance of this clause including this paragraph (b) in all subcontracts.

(End of clause)

52.204–1 Approval of Contract.

As prescribed in 4.103, insert the following clause:

APPROVAL OF CONTRACT (DEC 1989)

This contract is subject to the written approval of . . . . [identify title of designated agency official here] and shall not be binding until so approved.

(End of clause)

52.204–2 Security Requirements.

As prescribed in 4.404(a), insert the following clauses:

SECURITY REQUIREMENTS (AUG 1996)

(a) This clause applies to the extent that this contract involves access to information classified Confidential, Secret, or Top Secret.

(b) The Contractor shall comply with (1) the Security Agreement (DD Form 441), including the National Industrial Security Program Operating Manual (DOD 5220.22–M), and (2) any revisions to that manual, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this contract, the contract shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this contract.

(d) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (d) but excluding any reference to the Changes clause of this contract, in all subcontracts under this contract that involve access to classified information.

(End of clause)

Alternate I (APR 1984). If a cost contract for research and development with an educational institution is contemplated, add the following paragraphs (e), (f), and (g) to the basic clause:

(e) If a change in security requirements, as provided in paragraphs (b) and (c), results (1) in a change in the security classification of this contract or any of its elements from an
52.204-3 Taxpayer identification.

As prescribed in 4.905, insert the following provision:

**TAXPAYER IDENTIFICATION (OCT 1998)**

(a) **Definitions.**

- **Common parent,** as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

- **Taxpayer Identification Number (TIN),** as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3223(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror’s relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror’s TIN.

(d) **Taxpayer Identification Number (TIN).**

- [ ] TIN: ______________________

- [ ] TIN has been applied for.  
- [ ] TIN is not required because:
  - [ ] Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;  
  - [ ] Offeror is an agency or instrumentality of a foreign government;  
  - [ ] Offeror is an agency or instrumentality of the Federal Government.

(e) **Type of organization.**

- [ ] Sole proprietorship;  
- [ ] Partnership;  
- [ ] Corporate entity (not tax-exempt);  
- [ ] Corporate entity (tax-exempt);  
- [ ] Government entity (Federal, State, or local);  
- [ ] Foreign government;  
- [ ] International organization per 26 CFR 1.6049-4;
52.204-4

☐ Other

(p) Common parent.

☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

☐ Name and TIN of common parent:

Name ____________________________

TIN ____________________________

(End of provision)

[63 FR 58589, Oct. 30, 1998]

52.204-4 Printed or Copied Double-Sided on Recycled Paper.

As prescribed in 4.303, insert the following clause:

PRINTED OR COPIED DOUBLE-SIDED ON
RECYCLED PAPER (AUG 2000)

(a) Definitions. As used in this clause—

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.” For paper and paper products, postconsumer material means “postconsumer fiber” defined by the U.S. Environmental Protection Agency (EPA) as—

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers’ over-runs, converters’ scrap, and over-issuе publications.

Printed or copied double-sided means printing or reproducing a document so that information is on both sides of a sheet of paper.

Recovered material, for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as “recovered fiber” and means the following materials:

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as—

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

(End of clause)

[65 FR 36020, June 6, 2000]

52.204-5 Women-Owned Business (Other Than Small Business).

As prescribed in 4.607(b), insert the following provision:

WOMEN-OWNED BUSINESS (OTHER THAN SMALL
BUSINESS) (MAY 1999)

(a) Definition. Women-owned business concern, as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) Representation. [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern.] The offeror represents that it is a women-owned business concern.
52.204–6 Data Universal Numbering System (DUNS) Number.

As prescribed in 4.607(a), insert the following provision:

## DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (APR 2008)

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS+4” followed by the DUNS number or “DUNS+4” that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet, Inc. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11) for the same concern.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

1. An offeror may obtain a DUNS number—

   (i) Via the Internet at http://fedgov.dnb.com/webform or if the offeror does not have internet access, it may call Dun and Bradstreet at 1–866–705–5711 if located within the United States; or

   (ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

2. The offeror should be prepared to provide the following information:

   (i) Company legal business name.

   (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

   (iii) Company physical street address, city, state and Zip Code.

   (iv) Company mailing address, city, state and Zip Code (if separate from physical).

   (v) Company telephone number.

   (vi) Date the company was started.

   (vii) Number of employees at your location.

   (viii) Chief executive officer/key manager.

   (ix) Line of business (industry).

   (x) Company Headquarters name and address (reporting relationship within your entity).

52.204–7 Central Contractor Registration.

As prescribed in 4.1104, use the following clause:

## CENTRAL CONTRACTOR REGISTRATION (APR 2008)

(a) Definitions. As used in this clause—

Central Contractor Registration (CCR) database means the primary Government repository for Contractor information required for the conduct of business with the Government.

Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same concern.

Registered in the CCR database means that—

1. The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

2. The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record “Active”. The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

2. The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS+4” followed by the DUNS or DUNS+4 number that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.
(1) An offeror may obtain a DUNS number—
   (i) Via the Internet at http://fedgov.dnb.com/webform or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or
   (ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:
   (i) Company legal business,
   (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized,
   (iii) Company Physical Street Address, City, State, and Zip Code.
   (iv) Company Mailing Address, City, State and Zip Code (if separate from physical).
   (v) Company Telephone Number.
   (vi) Date the company was started.
   (vii) Number of employees at your location.
   (viii) Chief executive officer/key manager.
   (ix) Line of business (industry).
   (x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government’s reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis the data from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)(1)(i) If a Contractor has legally changed its business name, “doing business as” name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day’s written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.4, Assignment of Claims). Assignees should be separately registered in the CCR database. Information provided to the Contractor’s CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the “Suspension of payment” paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at http://www.ccr.gov or by calling 1-888-227-2423, or 269-961-5757.

52.204–8 Annual Representations and Certifications.

As prescribed in 4.1202, insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS (FEB 2009)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is [insert NAICS code].

(2) The small business size standard is [insert size standard].

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.
(b)(1) If the clause at 52.204–7, Central Contractor Registration, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the clause at 52.204–7 is not included in this solicitation, and the offeror is currently registered in CCR, and has completed the ORCA electronically, the offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The offeror shall indicate which option applies by checking one of the following boxes:

[ ] (i) Paragraph (d) applies.

[ ] (ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c)(1) The following representations or certifications in ORCA are applicable to this solicitation as indicated:

(i) 52.203–2, Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in Part 13;

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed $100,000.

(iii) 52.203–3, Taxpayer Identification. This provision applies to solicitations that do not include the clause at 52.204–7, Central Contractor Registration.

(iv) 52.204–5, Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold; and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(v) 52.209–5, Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(vi) 52.214–14, Place of Performance—Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(vii) 52.215–6, Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(viii) 52.219–1, Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(ix) 52.219–2, Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

(x) 52.222–22, Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at 52.222–26, Equal Opportunity.

(xi) 52.222–25, Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at 52.222–26, Equal Opportunity.

(xii) 52.222–36, Compliance with Veterans’ Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

(xiii) 52.223–1, Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA-designated items; or include the clause at 52.225–3, Buy American Act Certification. (Basic, Alternate I, and Alternate II) This provision applies to solicitations containing the clause at 52.225–3.

(A) If the acquisition value is less than $25,000, the basic provision applies.

(B) If the acquisition value is $25,000 or more but is less than $50,000, the provision with its Alternate I applies.

(C) If the acquisition value is $50,000 or more but is less than $67,826, the provision with its Alternate II applies.

(xiv) 52.223–4, Buy American Act—Free Trade Agreements—Israel Trade Act Certification. (Basic, Alternate I, and Alternate II) This provision applies to solicitations containing the clause at 52.223–4.

(xv) 52.222–22, Buy American Act Certification. This provision applies to solicitations containing the clause at 52.225–2.

(xvi) 52.223–4, Buy American Act—Free Trade Agreements—Israel Trade Act Certification. (Basic, Alternate I, and Alternate II) This provision applies to solicitations containing the clause at 52.225–4.

(xvii) 52.223–3, Buy American Act—Israel Trade Act Certification. This provision applies to solicitations containing the clause at 52.225–3.

(xviii) 52.225–20, Prohibition on Conducting Restricted Business Operations in Sudan—Certification.

(xix) 52.226–2, Historically Black College or University and Minority Institution Representation. This provision applies to—
52.204–9

(A) Solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions; and

(B) For DoD, NASA, and Coast Guard acquisitions, solicitations that contain the clause at 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

(2) The following certifications are applicable as indicated by the Contracting Officer:

[*Contracting Officer check as appropriate.*]

(i) 52.219–19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.

(ii) 52.219–21, Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program.

(iii) 52.219–22, Small Disadvantaged Business Status.

____ (A) Basic.

____ (B) Alternate I.

(iv) 52.222–18, Certification Regarding Knowledge of Child Labor for Listed End Products.

(v) 52.222–48, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.

(vi) 52.222–52 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.

(vii) 52.223–9, with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).

(viii) 52.223–13, Certification of Toxic Chemical Release Reporting.

(ix) 52.227–6, Royalty Information.

____ (A) Basic.

____ (B) Alternate I.

(x) 52.227–15, Representation of Limited Rights Data and Restricted Computer Software.

(d) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) website at [http://orca.bpn.gov]. After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.


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Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

(End of provision)

52.204–9 Personal Identity Verification of Contractor Personnel.

As prescribed in 4.1303, insert the following clause:

PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEP 2007)


(b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

(End of clause)

52.204–10 Reporting Subcontract Awards.

As prescribed in 4.1401(a), insert the following clause:

REPORTING SUBCONTRACT AWARDS (SEP 2007)

(a) Definition. Subcontract, as used in this clause, means any contract as defined in FAR Subpart 2.1 entered into by the Contractor to furnish supplies or services for performance of this contract. It includes, but is not limited to, purchase orders and changes and modifications to purchase orders, but does not include contracts that provide supplies or services benefiting two or more contracts.

(b) Section 2(d) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109–282) requires establishment of a pilot program for a single searchable
Federal Acquisition Regulation

As prescribed in 4.1502, insert the following clause:

AMERICAN RECOVERY AND REINVESTMENT ACT—REPORTING REQUIREMENTS (MAR 2009)

(a) Definitions. As used in this clause—

Contract, as defined in FAR 2.101, means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq. For discussion of various types of contracts, see FAR Part 16.

First-tier subcontract means a subcontract awarded directly by a Federal Government prime contractor whose contract is funded by the Recovery Act.

Jobs created means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

Jobs retained means an estimate of those previously existing filled positions that are retained as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

Total compensation means the cash and noncash dollar value earned by the executive during the contractor’s past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):

(1) Salary and bonus.
(2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
(3) Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
(4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
(5) Above-market earnings on deferred compensation which is not tax-qualified.
(6) Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds $10,000.

(b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires
each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.

(c) Reports from contractors for all work performed or funded in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 15th day after the end of each calendar quarter.

(d) The Contractor shall report the following information, using the online reporting tool available at http://www.FederalReporting.gov.

(1) The Government contract and order number, as applicable.

(2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government’s on-line reporting tool.

(3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.

(4) Program or project title, if any.

(5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.

(6) An assessment of the contractor’s progress towards the completion of the overall purpose and expected outcomes or results of the contract (i.e., not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.

(7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and only address the impact on the contractor’s workforce. At a minimum, the contractor shall provide—

(i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the contractor’s existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

(ii) An estimate of the number of jobs created and jobs retained by the prime contractor, in the United States and outlying areas. A job cannot be reported as both created and retained.

(8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if—

(i) In the Contractor’s preceding fiscal year, the Contractor received—

(A) 60 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986.

(9) For subcontracts valued at less than $25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under $300,000, the Contractor shall only report the aggregate number of such first-tier subcontracts awarded in the quarter and their aggregate total dollar amount.

(10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is over $25,000 and not subject to reporting under paragraph 9, the contractor shall require the subcontractor to provide the information described in (i), (ix), (x), and (xi) below to the contractor for the purposes of the quarterly report. The contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The contractor shall provide detailed information on these first-tier subcontracts as follows:

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor’s parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) The applicable North American Industry Classification System (NAICS) code.

(vi) Funding agency.

(vii) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(viii) Subcontract number (the contract number assigned by the prime contractor).

(ix) Subcontractor’s physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(xi) Names and total compensation of each of the subcontractor’s five most highly compensated officers, for the calendar year in which the subcontract is awarded if—

(A) In the subcontractor’s preceding fiscal year, the subcontractor received—
Federal Acquisition Regulation

52.207–3

As prescribed in 7.305(c), insert the following clause:

RIGHT OF FIRST REFUSAL OF EMPLOYMENT
(MAY 2006)

(a) The Contractor shall give Government personnel who have been or will be adversely affected or separated as a result of award of this contract the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

(b) Within 10 days after contract award, the Contracting Officer will provide a list of all Government personnel who have been or will be adversely affected or separated as a result of award of this contract.

(End of provision)
52.207–4 Economic Purchase Quantity—Supplies.

As prescribed in 7.203, insert the following provision:

ECONOMIC PURCHASE QUANTITY—SUPPLIES (AUG 1987)

(a) Offerors are invited to state an opinion on whether the quantity(ies) of supplies on which bids, proposals or quotes are requested in this solicitation is (are) economically advantageous to the Government.

(b) Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to recommend an economic purchase quantity. If different quantities are recommended, a total and a unit price must be quoted for applicable items. An economic purchase quantity is that quantity at which a significant price break occurs. If there are significant price breaks at different quantity points, this information is desired as well.

OFFEROR RECOMMENDATIONS

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<th>Item</th>
<th>Quantity</th>
<th>Price quotation</th>
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(c) The information requested in this provision is being solicited to avoid acquisitions in disadvantageous quantities and to assist the Government in developing a data base for future acquisitions of these items. However, the Government reserves the right to amend or cancel the solicitation and re-solicit with respect to any individual item in the event quotations received and the Government’s requirements indicate that different quantities should be acquired.

(End of provision)

Federal Acquisition Regulation

52.208–8

is delivered to the Government, whichever is later, and shall continue until the expiration of the contract term or the termination of this contract. However, rent shall accrue only for the period that each vehicle is in the possession of the Government.

(c) Rent shall not accrue for any vehicle that the Contracting Officer determines does not comply with the Condition of Leased Vehicles clause of this contract or otherwise does not comply with the requirements of this contract, until the vehicle is replaced or the defects are corrected.

(d) Rent shall not accrue for any vehicle during any period when the vehicle is unavailable or unusable as a result of the Contractor’s failure to render services for the operation and maintenance of the vehicle as prescribed by this contract.

(e) Rent stated in monthly terms shall be prorated on the basis of 1/30th of the monthly rate for each day the vehicle is in the Government’s possession. If this contract contains a mileage provision, the Government shall pay rent as provided in the Schedule.

(End of clause)

52.208–5 Condition of Leased Vehicles.

As prescribed in 8.1104(b), insert the following clause in solicitations and contracts for leasing motor vehicles, unless the motor vehicles are leased in foreign countries:

CONDITION OF LEASED VEHICLES (APR 1984)

Each vehicle furnished under this contract shall be of good quality and in safe operating condition, and shall comply with the Federal Motor Vehicle Safety Standards (49 CFR 571) and State safety regulations applicable to the vehicle. The Government shall accept or reject the vehicles promptly after receipt. If the Contracting Officer determines that any vehicle furnished is not in compliance with this contract, the Contracting Officer shall promptly inform the Contractor in writing. If the Contractor fails to replace the vehicle or correct the defects as required by the Contracting Officer, the Government may (a) by contract or otherwise, correct the defect or arrange for the lease of a similar vehicle and shall charge or set off against the Contractor any excess costs occasioned thereby, or (b) terminate the contract under the Default clause of this contract.

(End of clause)

52.208–6 Marking of Leased Vehicles.

As prescribed in 8.1104(c), insert the following clause in solicitations and contracts for leasing motor vehicles, unless the motor vehicles are leased in foreign countries:

MARKING OF LEASED VEHICLES (APR 1984)

(a) The Government may place nonpermanent markings or decals, identifying the using agency, on each side, and on the front and rear bumpers, of any motor vehicle leased under this contract. The Government shall use markings or decals that are removable without damage to the vehicle.

(b) The Contractor may use placards for temporary identification of vehicles except that the placards may not contain any references to the Contractor that may be construed as advertising or endorsement by the Government of the Contractor.

(End of clause)

52.208–7 Tagging of Leased Vehicles.

As prescribed in 8.1104(d), insert a clause substantially as follows:

TAGGING OF LEASED VEHICLES (MAY 1986)

While it is the intent that vehicles leased under this contract will operate on Federal tags, the Government reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Contractor shall furnish the Government documentation necessary to allow acquisition of such tags. Federal tags are the responsibility of the Government.

(End of clause)

52.208–8 Required Sources for Helium and Helium Usage Data.

As prescribed in 8.505, insert the following clause:

REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA (APR 2002)

(a) Definitions.

Bureau of Land Management, as used in this clause, means the Department of the Interior, Bureau of Land Management, Amarillo Field Office, Helium Operations, located at 801 South Fillmore Street, Suite 500, Amarillo, TX 79101–3545.

Federal helium supplier means a private helium vendor that has an in-kind crude helium sales contract with the Bureau of Land Management (BLM) and that is on the BLM Amarillo Field Office’s Authorized List of Federal Helium Suppliers available via the Internet at http://www.nm.blm.gov/www/amfo/amfo_home.html.

Major helium requirement means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) (measured at 14.7 pounds per square inch absolute pressure)

[51 FR 19717, May 30, 1986]
52.208–9

Contractor Use of Mandatory Sources of Supply or Services.

As prescribed in 8.004, insert the following clause:

CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY OR SERVICES (OCT 2008)

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from nonprofit agencies participating in the program operated by the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under the Javits-Wagner-O’Day Act (41 U.S.C. 44). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies or services to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of supplies or services provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or an AbilityOne central nonprofit agency has authorized purchase from other sources.

(c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies or services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments shall be made directly to the source making delivery. Points of contact for AbilityOne central nonprofit agencies are:

(1) National Industries for the Blind, 1310 Braddock Place, Alexandria, VA 22314–1691, (703) 318–8500; and
(2) NISH, 8401 Old Courthouse Road, Vienna, VA 22182, (571) 226–4660.

(End of clause)

[67 FR 13064, Mar. 20, 2002]

52.208–9

48 CFR Ch. 1 (10–1–09 Edition)

52.209–1 Qualification Requirements.

As prescribed in 9.206–2, insert the following clause:

QUALIFICATION REQUIREMENTS (FEB 1995)

(a) Definition: Qualification Requirement, as used in this clause, means a Government requirement for testing or other quality assurance demonstration that must be completed before award.

(b) One or more qualification requirements apply to the supplies or services covered by this contract. For those supplies or services requiring qualification, whether the covered product or service is an end item under this contract or simply a component of an end item, the product, manufacturer, or source must have demonstrated that it meets the standards prescribed for qualification before award of this contract. The product, manufacturer, or source must be qualified at the time of award whether or not the name of the product, manufacturer, or source is actually included on a qualified products list, qualified manufacturers list, or qualified bidders list. Offerors should contact the agency activity designated below to obtain all requirements that they or their products or services, or their subcontractors or their products or services, must satisfy to become qualified and to arrange for an opportunity to demonstrate their abilities to meet the standards specified for qualification.

(Name)

(Address)

(c) If an offeror, manufacturer, source, product or service covered by a qualification requirement has already met the standards specified, the relevant information noted below should be provided.

Offeror’s Name ______________________

Manufacturer’s Name ______________________
Federal Acquisition Regulation

52.209–3 First Article Approval—Contractor Testing.

As prescribed in 9.308-1 (a) and (b), insert the following clause:

FIRST ARTICLE APPROVAL—CONTRACTOR TESTING (SEP 1989)

[Contracting Officer shall insert details]

(a) The Contractor shall test __ unit(s) of Lot/Item __ as specified in this contract. At least calendar days before the beginning of first article tests, the Contractor shall notify the Contracting Officer, in writing, of the time and location of the testing so that the Government may witness the tests.

(b) The Contractor shall submit the first article test report within __ calendar days from the date of this contract to __ [insert address of the Government activity to receive the report] marked “FIRST ARTICLE TEST REPORT: Contract No. __, Lot/Item No. __.” Within __ calendar days after the Government receives the test report, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.

(c) If the first article is disapproved, the Contractor, upon Government request, shall repeat any or all first article tests. After each request for additional tests, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall then conduct
the tests and deliver another report to the Government under the terms and conditions and within the time specified by the Government. The Government shall take action on this report within the time specified in paragraph (b) above. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule, or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article report on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, and if the approved first article is not consumed or destroyed in testing, the Contractor may deliver the first article as part of the contract quantity if it meets all contract requirements for acceptance.

(f) If the Government does not act within the time specified in paragraph (b) or (c) above, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the Changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

(h) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the offeror/contractor and have been accepted by the Government. The offeror/contractor may request a waiver.

(End of clause)

Alternate I (JAN 1997). As prescribed in 9.308–1 (a)(2) and (b)(2), add the following paragraph (i) to the basic clause:

(i) The Contractor shall produce both the first article and the production quantity at the same facility.

Alternate II (SEP 1989). As prescribed in 9.308–1 (a)(3) and (b)(3), substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

As prescribed in 9.308–2 (a) and (b), insert the following clause:

FIRST ARTICLE APPROVAL—GOVERNMENT TESTING (SEP 1989)

[Contracting Officer shall insert details]

(a) The Contractor shall deliver __ unit(s) of Lot/Item __ within __ calendar days from the date of this contract to the Government at __ (insert name and address of the testing facility) for first article tests. The shipping documentation shall contain this contract number and the Lot/Item identification. The characteristics that the first article must meet and the testing requirements are specified elsewhere in this contract.

(b) Within __ calendar days after the Government receives the first article, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.

(c) If the first article is disapproved, the Contractor, upon Government request, shall submit an additional first article for testing. After each request, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall furnish any additional first article to the Government under the terms and conditions and within the time specified
Federal Acquisition Regulation

52.209-5

by the Government. The Government shall act on this first article within the time limit specified in paragraph (b) above. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, the Contractor—

(1) May deliver the approved first article as a part of the contract quantity, provided it meets all contract requirements for acceptance and was not consumed or destroyed in testing; and

(2) Shall remove and dispose of any first article from the Government test facility at the Contractor’s expense.

(f) If the Government does not act within the time specified in paragraph (b) or (c) above, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the Changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) The Contractor is responsible for providing operating and maintenance instructions, spare parts support, and repair of the first article during any first article test.

(h) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract or for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

(h) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.


52.209-5 Certification Regarding Responsibility Matters.

As prescribed in 9.104-6, insert the following provision:

CERTIFICATION REGARDING RESPONSIBILITY MATTERS (DEC 2008)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ( ) have not ( ), within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(C) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(B) of this provision; and

(D) Have ( ) have not ( ), within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds $3,000 for which the liability remains unsatisfied.

(j) Federal taxes are considered delinquent if both of the following criteria apply:

(End of clause)

Alternate I (JAN 1997). As prescribed in 9.308-2 (a)(2) and (b)(2), add the following paragraph (j) to the basic clause:

(j) The Contractor shall produce both the first article and the production quantity at the same facility.

Alternate II (SEP 1989). As prescribed in 9.308-2 (a)(3) and (b)(3) substitute the following paragraph (h) for paragraph (h) of the basic clause:

(h) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

(i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples. (i) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212 which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to seek Tax Court review. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to seek Tax Court review. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iv) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(v) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(vi) The Offeror has ( ), has not ( ), within a 3-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) Principal, for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions).

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror’s responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

52.209-6 Protecting the Government’s Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.

As prescribed in 9.409(b), insert the following clause:

**Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment** (SEP 2006)

(a) The Government suspends or debars Contractors to protect the Government’s interests. The Contractor shall not enter into any subcontract in excess of $30,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed $30,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
Federal Acquisition Regulation

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the Excluded Parties List System. The notice must include the following:

(1) The name of the subcontractor.
(2) The Contractor’s knowledge of the reasons for the subcontractor being in the Excluded Parties List System.
(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.
(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government’s interests when dealing with such subcontractor in view of the specific basis for the party’s debarment, suspension, or proposed debarment.

(End of clause)


52.211–3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in 11.204(c), insert the following provision:

AVAILABILITY OF SPECIFICATIONS NOT LISTED IN THE GSA INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND COMMERCIAL ITEM DESCRIPTIONS (JUN 1988)

The specifications cited in this solicitation may be obtained from:

(Activity) address)

(Telephone number)

(End of provision)

[71 FR 228, Jan. 3, 2006]

52.211–3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in 11.204(c), insert a provision substantially the same as the following:

AVAILABILITY OF SPECIFICATIONS NOT LISTED IN THE GSA INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND COMMERCIAL ITEM DESCRIPTIONS (JUN 1988)

The specifications cited in this solicitation may be obtained from:

(Activity) address)

(Telephone number)

(End of provision)

[63 FR 34063, June 22, 1998]
52.211–4 Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in 11.204(d), insert a provision substantially the same as the following:

AVAILABILITY FOR EXAMINATION OF SPECIFICATIONS NOT LISTED IN THE GSA INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND COMMERCIAL ITEM DESCRIPTIONS (JUN 1988)

The specifications cited in this solicitation are not available for distribution. However, they may be examined at the following location(s):

(ACTIVITY)
(COMPLETE ADDRESS)

(TELEPHONE NUMBER)
(PERSON TO BE CONTACTED)
(TIME(S) FOR VIEWING)

(End of provision)

52.211–5 Material Requirements.

As prescribed in 11.301, insert the following clause:

MATERIAL REQUIREMENTS (AUG 2000)

(a) Definitions. As used in this clause—

New means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

Reconditioned means restored to the original normal operating condition by readjustments and material replacement.

Virgin material means—

(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

Remanufactured means factory rebuilt to original specifications.

(b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this clause.

(c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.

(d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Contracting Officer for approval.

(e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in contract performance if the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

(End of clause)

52.211–6 Brand name or equal.

As prescribed in 11.107(a), insert the following provision:

BRAND NAME OR EQUAL (AUG 1999)

(a) If an item in this solicitation is identified as “brand name or equal,” the purchase description reflects the characteristics and level of quality that will satisfy the Government’s needs. The salient physical, functional, or performance characteristics that “equal” products must meet are specified in the solicitation.

(b) To be considered for award, offers of “equal” products, including “equal” products of the brand name manufacturer, must—

(1) Meet the salient physical, functional, or performance characteristic specified in this solicitation;

(2) Clearly identify the item by—

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and

Remanufactured means factory rebuilt to original specifications.

Virgin material means—

(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

(End of clause)
Federal Acquisition Regulation

52.211–8

(4) Clearly describe any modifications the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

(c) The Contracting Officer will evaluate “equal” products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or obtaining any information not identified in the offer.

(d) Unless the offeror clearly indicates in its offer that the product being offered is an “equal” product, the offeror shall provide the brand name product referenced in the solicitation.

(End of provision)


52.211–7 Alternatives to Government-unique standards.

As prescribed in 11.107(b), insert the following provision:

ALTERNATIVES TO GOVERNMENT-UNIQUE STANDARDS (NOV 1999)

(a) This solicitation includes Government-unique standards. The offeror may propose voluntary consensus standards that meet the Government’s requirements as alternatives to the Government-unique standards. The Government will accept use of the voluntary consensus standard instead of the Government-unique standard if it meets the Government’s requirements unless inconsistent with law or otherwise impractical.

(b) If an alternative standard is proposed, the offeror must furnish data and/or information regarding the alternative in sufficient detail for the Government to determine if it meets the Government’s requirements. Acceptance of the alternative standard is a unilateral decision made solely at the discretion of the Government.

(c) Offers that do not comply with the Government-unique standards specified in this solicitation may be determined to be nonresponsive or unacceptable. The offeror may submit an offer that complies with the Government-unique standard if it meets the Government-unique standards specified in this solicitation, in addition to any proposed alternative standard(s).

(End of provision)

[64 FR 51853, Sept. 24, 1999]

52.211–8 Time of Delivery.

As prescribed in 11.404(a)(2), insert the following clause:

TIME OF DELIVERY (JUN 1997)

(a) The Government requires delivery to be made according to the following schedule:

REQUIRED DELIVERY SCHEDULE

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>QUANTITY</th>
<th>WITHIN DAYS AFTER DATE OF CONTRACT</th>
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</thead>
<tbody>
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</table>

The Government will evaluate equally, as regards time of delivery, offers that propose delivery of each quantity within the applicable delivery period specified above. Offers that propose delivery that will not clearly fall within the applicable required delivery period specified above, will be considered nonresponsive and rejected. The Government reserves the right to award under either the required delivery schedule or the proposed delivery schedule, when an offeror offers an earlier delivery schedule than required above. If the offeror proposes no other delivery schedule, the required delivery schedule above will apply.

OFFEROR’S PROPOSED DELIVERY SCHEDULE

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>QUANTITY</th>
<th>WITHIN DAYS AFTER DATE OF CONTRACT</th>
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</table>

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed, or otherwise furnished to the successful offeror, results in a binding contract. The Government will mail or otherwise furnish to the offeror an award or notice of award not later than the day award is dated. Therefore, the offeror should compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor’s date of receipt of the contract or notice of award by adding (1) five calendar days for delivery of the award through the ordinary mails, or (2) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term working day excludes weekends and U.S. Federal
46 CFR Ch. 1 (10–1–09 Edition) 52.211–9

Desired and Required Time of Delivery.

As prescribed in 11.404(a)(3), insert the following clause:

DESIRED AND REQUIRED TIME OF DELIVERY

(JUN 1997)

(a) The Government desires delivery to be made according to the following schedule:

DESIRED DELIVERY SCHEDULE

[Contracting Officer insert specific details]

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>QUANTITY</th>
<th>WITHIN DAYS AFTER DATE OF CONTRACT</th>
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</table>

If the offeror is unable to meet the desired delivery schedule, it may, without prejudicing evaluation of its offer, propose a delivery schedule below. However, the offeror’s proposed delivery schedule must not extend the delivery period beyond the time for delivery in the Government’s required delivery schedule as follows:

REQUIRED DELIVERY SCHEDULE

[Contracting Officer insert specific details]

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>QUANTITY</th>
<th>WITHIN DAYS AFTER DATE OF CONTRACT</th>
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</table>

Offers that propose delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable required delivery period specified above, will be considered nonresponsive and rejected. If the offeror proposes no other delivery schedule, the desired delivery schedule above will apply.

Alternate III (APR 1984). If the delivery schedule is to be based on the actual date the contractor receives a written notice of award, the contracting officer may delete paragraph (b) of the basic clause. The time may be expressed by substituting within days after the date of receipt of a written notice of award as the heading for the third column of paragraph (a) of the basic clause.

### Federal Acquisition Regulation

**52.211-10**

**OFFEROR'S PROPOSED DELIVERY SCHEDULE**

<table>
<thead>
<tr>
<th>ITEM NO</th>
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</table>

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. Therefore, the offeror shall compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding (1) five calendar days for delivery of the award through the ordinary mails, or (2) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term "working day" excludes weekends and U.S. Federal holidays.) If, as so computed, the offered delivery date is later than the required delivery date, the offer will be considered non-responsive and rejected.

(End of clause)

**Alternate I (APR 1984)**. If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date of award, the contracting officer may substitute the following paragraph (b) for paragraph (b) of the basic clause. The time may be expressed by substituting within days after the date of receipt of a written notice of award as the heading of the third column of paragraph (a) of the basic clause.

(2) As prescribed in 11.404(b), insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated. The clause may be changed to accommodate the issuance of orders under indefinite-delivery contracts for construction.

**52.211-10 Commencement, Prosecution, and Completion of Work.**

As prescribed in 11.404(b), insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated. The clause may be changed to accommodate the issuance of orders under indefinite-delivery contracts for construction.

**Commencement, Prosecution, and Completion of Work (APR 1984)**

The Contractor shall be required to (a) commence work under this contract within

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*Note: The table represents the OFFEROR'S PROPOSED DELIVERY SCHEDULE with placeholders for ITEM NO., QUANTITY, and WITHIN DAYS AFTER DATE OF CONTRACT.*
52.211-11 Liquidated Damages—Supplies, Services, or Research and Development.

As prescribed in 11.503(a), insert the following clause in solicitations and contracts:

LIQUIDATED DAMAGES—SUPPLIES, SERVICES, OR RESEARCH AND DEVELOPMENT (SEP 2000)

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the Government liquidated damages of $____ per calendar day of delay [Contracting Officer insert amount].

(b) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the Government liquidated damages of $____ per calendar day of delay [Contracting Officer insert amount].

(c) The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Default—Fixed-Price Supply and Service clause in this contract.

(End of clause)

52.211-12 Liquidated Damages—Construction.

As prescribed in 11.503(b), insert the following clause in solicitations and contracts:

LIQUIDATED DAMAGES—CONSTRUCTION (SEP 2000)

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of $____ [Contracting Officer insert amount] for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of clause)

52.211-13 Time Extensions.

As prescribed in 11.503(c), insert the following clause:

TIME EXTENSIONS (SEP 2000)

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

(End of clause)
Federal Acquisition Regulation


As prescribed in 11.604(a), insert the following provision:

NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE, EMERGENCY PREPAREDNESS, AND ENERGY PROGRAM USE (APR 2008)

Any contract awarded as a result of this solicitation will be [ ] DX rated order; [ ] DO rated order certified for national defense, emergency preparedness, and energy program use under the Defense Priorities and Allocations System (DPAS) (15 CFR 700), and the Contractor will be required to follow all of the requirements of this regulation. [Contracting Officer check appropriate box.]

(End of provision)

52.211–15 Defense Priority and Allocation Requirements.

As prescribed in 11.604(b), insert the following clause:

DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (APR 2008)

This is a rated order certified for national defense, emergency preparedness, and energy program use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR part 700).

(End of clause)

52.211–16 Variation in Quantity.

As prescribed in 11.703(a), insert the following clause:

VARIATION IN QUANTITY (APR 1984)

(a) A variation in the quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified in paragraph (b) below.

(b) The permissible variation shall be limited to:

_ Percent increase [Contracting Officer insert percentage]
_ Percent decrease [Contracting Officer insert percentage]

This increase or decrease shall apply to

*(End of clause)

*Contracting Officer shall insert in the blank the designation(s) to which the percentages apply, such as (1) the total contract quantity, (2) item 1 only, (3) each quantity specified in the delivery schedule, (4) the total item quantity for each destination, or (5) the total quantity of each item without regard to destination.

52.211–17 Delivery of Excess Quantities.

As prescribed in 11.703(b), insert the following clause:

DELIVERY OF EXCESS QUANTITIES (SEP 1989)

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to $250 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of $250 will, at the option of the Government, either be returned at the Contractor’s expense or retained and paid for by the Government at the contract unit price.

(End of clause)

52.211–18 Variation in Estimated Quantity.

As prescribed in 11.703(c), insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated that authorizes a variation in the estimated quantity of unit-priced items:

(Paragraphs [52.211–18(a)–(b)] added at 60 FR 36518, Sept. 18, 1995; 54 FR 2478, Sept. 19, 1989; 60 FR 42521, 42556, Sept. 18, 1995; 64 FR 10538, Mar. 4, 1999; 65 FR 48251, 48256, Sept. 18, 1995; 73 FR 21785, Apr. 22, 2008)

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If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgement of the Contracting Officer, is justified.

(End of clause)

52.212-1 Instructions to Offerors— Commercial Items.

As prescribed in 12.301(b)(1), insert the following provision:

INSTRUCTIONS TO OFFERORS—COMMERCIAL ITEMS (JUN 2008)

(a) North American Industry Classification System (NAICS) code and small business size standard. The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish items for satisfying the requirements of this solicitation at or before the exact time specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender’s request and expense, unless they are destroyed during preaward testing.

(b) Submission of offers. Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

(1) The solicitation number;
(2) The time specified in the solicitation for receipt of offers;
(3) The name, address, and telephone number of the offeror;
(4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
(5) Terms of any express warranty;
(6) Price and any discount terms;
(7) “Remit to” address, if different than mailing address;
(8) A completed copy of the representations and certifications at FAR 52.212-3 (see FAR 52.212-3(b) for those representations and certifications that the offeror shall complete electronically);
(9) Acknowledgment of Solicitation Amendments;
(10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
(11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) Period for acceptance of offers. The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) Product samples. When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender’s request and expense, unless they are destroyed during preaward testing.

(e) Multiple offers. Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) Late submissions, modifications, revisions, and withdrawals of offers. (1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made,
the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government’s control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first working day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(e) Contract award (not applicable to Invitation for Bids). The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror’s initial offer should contain the offeror’s best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive irregularities in offers received.

(h) Multiple awards. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.


(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to—GSA Federal Supply Service Specifications Section, Suite 8100, 470 East L’Enfant Plaza, SW, Washington, DC 20407, Telephone (202) 619–8925, Facsimile (202) 619–8979.

(iii) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, Telephone (215) 697–2179, Facsimile (215) 697–1462.

(2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:

(i) ASSIST (http://assist.daps.dla.mil).


(iii) ASSISTdocs.com (http://assistdocs.com).

(3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by—

(i) Using the ASSIST Shopping Wizard (http://assist.daps.dla.mil/wizard);

(ii) Phoning the DoDSSP Customer Service Desk (215) 697–2179, Mon–Fri, 0730 to 1600 EST; or

(iii) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, Telephone (215) 697–2179, Facsimile (215) 697–1462.

(4) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(3) Data Universal Numbering System (DUNS) Number. (Applies to all offers exceeding $3,000, and offers of $3,000 or less if the solicitation requires the Contractor to be registered in the Central Contractor Registration (CCR) database. The offeror shall enter, in the block with its name and address on
the cover page of its offer, the annotation "DUNS" or "DUNS +4" number that identifies the offeror's name and address. The DUNS +4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR Subpart 32.11) for the same concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1-866-705-5711 or via the internet at http://fedgov.dnb.com/webform. An offeror located outside the United States must contact the local Dun and Bradstreet office for a DUNS number. The offeror should indicate that it is an offeror for a Government contract when contacting the local Dun and Bradstreet office.

(k) Central Contractor Registration. Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the Internet at http://www.ccr.gov or by calling 1-888-227-3423 or 269-961-5737.

(1) Debriefing. If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(1) The agency’s evaluation of the significant weak or deficient factors in the debriefed offeror’s offer.
(2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.
(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.
(4) A summary of the rationale for award;
(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror;
(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

52.212–2 Evaluation—Commercial Items.

As prescribed in 12.301(c), the Contracting Officer may insert a provision substantially as follows:

Evaluation—Commercial Items (JAN 1999)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

(Contracting Officer shall insert the significant evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.304); (iv) small disadvantaged business participation; and include them in the relative order of importance of the evaluation factors, such as in descending order of importance.)

Technical and past performance, when combined, are

(b) Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer’s specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.
Federal Acquisition Regulation  

(End of provision)


52.212-3 Offeror Representations and Certifications—Commercial Items.

As prescribed in 12.301(b)(2), insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (AUG 2009)

An offeror shall complete only paragraph (b) of this provision if the offeror has completed the annual representations and certifications electronically at http://orca.bpn.gov. If an offeror has not completed the annual representations and certifications electronically at the ORCA website, the offeror shall complete only paragraphs (c) through (m) of this provision.

(a) Definitions. As used in this provision—

Emerging small business means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

Forced or indentured child labor means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Inverted domestic corporation means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. 395(b), i.e., a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

Manufactured end product means any end product in Federal Supply Classes (FSC) 5000-9999, except—

(1) FSC 5510, Lumber and Related Basic Wood Materials;

(2) Federal Supply Group (FSG) 87, Agricultural Supplies;

(3) FSG 88, Live Animals;

(4) FSG 89, Food and Related Consumables;

(5) FSC 9410, Crude Grades of Plant Materials;

(6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;

(7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;

(8) FSC 9620, Minerals, Natural and Synthetic; and

(9) FSC 9630, Additive Metal Materials.

Place of manufacture means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

Restricted business operations means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110–174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

(1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

(2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

(3) Consist of providing goods or services to marginalized populations of Sudan;

(4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(5) Consist of providing goods or services that are used only to promote health or education; or

(6) Have been voluntarily suspended.

Service-disabled veteran-owned small business concern—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR
52.212-3  48 CFR Ch. 1 (10–1–09 Edition)

Part 121 and size standards in this solicitation.

Veteran-owned small business concern means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned small business concern means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

Women-owned business concern means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b)(1) Annual Representations and Certifications. Any changes provided by the offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications posted on the Online Representations and Certifications Application (ORCA) website.

(2) The offeror has completed the annual representations and certifications electronically via the ORCA website at http://orca.bpn.gov. After reviewing the ORCA database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212–3, Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs .

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it is, is not a small business concern.

(2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it is, is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it is, is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it is, is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is, is not a women-owned small business concern.

NOTE: Complete paragraphs (c)(6) and (c)(7) only if this solicitation is expected to exceed the simplified acquisition threshold.

(6) Women-owned business concern (other than small business concern). [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is, is, a women-owned business concern.

(7) Tie bid priority for labor surplus area concerns. If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

(8) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(1) [Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the designated industry groups (DIGs).] The offeror represents as part of its offer that it is, is not an emerging small business.
Federal Acquisition Regulation

52.212-3

(11) (Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or designated industry groups (DIGs).) Offeror represents as follows:

(A) Offeror’s number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees), or

(B) Offeror’s average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts)

(9) (Complete only if the solicitation contains the clause at FAR 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or FAR 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.)

(i) General. The offeror represents that either—

(A) It [ ] is, [ ] is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) It [ ] has, [ ] has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns. The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.102(f) and that the representation in paragraph (c)(9)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture:]

(10) HUBZone small business concern. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents, as part of its offer, that—

(i) It [ ] is, [ ] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:]

Each HUBZone small business concern participating on the joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Representations required to implement provisions of Executive Order 11246—

(1) Previous contracts and compliance. The offeror represents that—

(i) It [ ] has, [ ] has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It [ ] has, [ ] has not filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that—

(i) It [ ] has developed and has on file, [ ] has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60–1 and 60–2), or

(ii) It [ ] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1332). (Applies only if the contract is expected to exceed $100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member

55
of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(i) Buy American Act Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.” The terms “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Supplies.”

(2) Foreign End Products:

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<th>Line Item No.</th>
<th>Country of Origin</th>
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(ii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.”

Other Foreign End Products

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<th>Country of Origin</th>
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(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)(1) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate. (Applies only if the clause at FAR 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian, Moroccan, Omani, or Peruvian end product,” “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.”

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Free Trade Agreement Country End Products:

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(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I. If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(3) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Canadian End Products:

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<th>Line Item No.</th>
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Federal Acquisition Regulation

§ 52.212-3

(3) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II. If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled ‘‘Buy American Act—Free Trade Agreements—Israeli Trade Act’’:

Canadian or Israeli End Products:

Line Item No.

Country of Origin

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225-3, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled ‘‘Trade Agreements.’’

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products

Line Item No.

Country of Origin:

(line as necessary)

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(iv) The offeror certifies that each end product being offered, except those listed in paragraph (g)(1)(ii) of this provision, is a domestic end product (as defined in the clause entitled ‘‘Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program,’’ and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

(ii) Excluded End Products:

Line Item No.

Country of Origin

(line as necessary)

(iii) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (g)(1)(ii) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA country end products. The offeror certifies that the following supplies qualify as NAFTA country end products as that term is defined in the clause entitled ‘‘Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program’’:

(Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge
and belief, that the offeror and/or any of its principals—
(1) [ ] Are, [ ] are not presently debarred, suspended, proposed for debarment, or de-
clared ineligible for the award of contracts by any Federal agency;
(2) [ ] Have, [ ] have not, within a three-
year period preceding this offer, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtain-
ing, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state anti-trust statutes relating to the submission of offers; or: Commission of embezzlement, theft, forgery, bribery, falsification or de-
struction of records, making false statements, tax evasion, violating Federal crimi-
nal tax laws, or receiving stolen property.
(3) [ ] Are, [ ] are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, com-
mmission of any of these offenses enumerated in paragraph (b)(2) of this clause; and;
(i) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (i)(1) any end products being ac-
quired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]
(1) Listed end products.

Listed End Product

Listed Countries of Origin

(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]
☐ (i) The offeror will not supply any end product listed in paragraph (i)(1) of this pro-
vision that was mined, produced, or manu-
factured in the corresponding country as listed for that product.
☐ (ii) The offeror may supply an end prod-
uct listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine wheth-
er forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract.
On the basis of those efforts, the offeror cer-
tifies that it is not aware of any such use of child labor.
(4) Have, [ ] have not, within a three-year period preceding this offer, been notified of
any delinquent Federal taxes in an amount that exceeds $3,000 for which the liability re-
 mains unsatisfied.
(i) Taxes are considered delinquent if both of the following criteria apply:
(A) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally deter-
mined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
(B) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the tax-
payer has failed to pay the tax liability when full payment was due and required. A tax-
payer is not delinquent in cases where en-
forced collection action is precluded.
(ii) Examples. (A) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6221, which entitles the taxpayer to seek Tax Court review of a proposed tax defi-
ciency. This is not a delinquent tax because it is not a final tax liability. Should the tax-
payer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax li-
ability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the tax-
payer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior oppor-
tunity to contest the liability. This is not a delinquent tax because it is not a final tax li-
ability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
(C) The taxpayer has entered into an in-
stalment agreement pursuant to I.R.C. §6159. The taxpayer is making timely pay-
ments and is in full compliance with the agreement terms. The taxpayer is not delin-
quent because the taxpayer is not currently required to make full payment.
(D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).
(i) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (i)(1) any end products being ac-
quired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]
(1) Listed end products.
Listed End Product

Listed Countries of Origin

(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

☐ (i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

☐ (ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of these efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) Place of manufacture. (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to mine, produce, or manufacture any such end product furnished under this contract. The offeror must certify to either (j)(1) or (j)(2) of this provision, which specifies the place of manufacture of the end products.

☐ (1) In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States; or.

☐ (2) Outside the United States.

(k) Certificates regarding exemptions from the application of the Service Contract Act. (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]

☐ (1) Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003–4(c)(1). The offeror ☐ does ☐ does not certify that—

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003–4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

☐ (2) Certain services as described in FAR 22.1003–4(d)(1). The offeror ☐ does ☐ does not certify that—

(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR 22.1003–4(d)(2)(iii));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(1) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (1)(3) through (1)(6) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).
(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror’s relationship with the Government (31 U.S.C. 7701 (c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror’s TIN.

(3) Taxpayer Identification Number (TIN).

TIN:

TIN has been applied for.

TIN is not required because:

Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

☑ Sole proprietorship;

☑ Partnership;

☑ Corporate entity (not tax-exempt);

☑ Corporate entity (tax-exempt);

☑ Government entity (Federal, State, or local);

☑ Foreign government;

☑ International organization per 26 CFR 1.6049–4;

☑ Other

(5) Common parent.

☑ Offeror is not owned or controlled by a common parent;

☑ Name and TIN of common parent:

Name

TIN

(End of provision)

Alternate I (APR 2002). As prescribed in 12.301(b)(2), add the following paragraph (c)(11) to the basic provision:

(11) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(4) or (c)(9) of this provision.) [The offeror shall check the category in which its ownership falls]:

☐ Black American.

☐ Hispanic American.

☐ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

☑ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

☐ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

☑ Individual/concern, other than one of the preceding.

Alternate II (OCT 2000). As prescribed in 12.301(b)(2), add the following paragraph (c)(9)(iii) to the basic provision:

(iii) Address. The offeror represents that its address is not in a region for which a small disadvantaged business procurement mechanism is authorized and its address has not changed since its certification as a small disadvantaged business concern or submission of its application for certification. The list of authorized small disadvantaged business procurement mechanisms and regions is posted at http://www.arnet.gov/References/sdbadjustments.htm. The offeror shall use the list in effect on the date of this solicitation. "Address," as used in this provision, means the address of the offeror as listed on the Small Business Administration’s register of small disadvantaged business concerns or the address on the completed application that the concern has submitted to the Small Business Administration or a Private Certifier in accordance with 13 CFR part 124.
subpart B. For joint ventures, “address” refers to the address of the small disadvantaged business concern that is participating in the joint venture.

52.212-4 Contract Terms and Conditions—Commercial Items.

As prescribed in 12.301(b)(3), insert the following clause:

**CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (MAR 2009)**

(a) **Inspection/Acceptance.** The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair or replacement will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) **Assignment.** The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) **Changes.** Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) **Disputes.** This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.237-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) **Definitions.** The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) **Excusable delays.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) **Invoice.** (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent.
(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment. (1) Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) Prompt payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) Interest. (i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;
(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:
(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(o) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.


(s) Limitation of liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(t) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(u) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(v) Limitation of liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(w) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoices, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitations provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

(x) Central Contractor Registration (CCR). (1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government’s reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the
terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(ii) If a Contractor has legally changed its name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not complied with the necessary requirements regarding novation and change-of-name agreements in FAR subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day’s written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(iii) If the Contractor fails to comply with the requirements of paragraph (ii) of this clause, or fails to perform the agreement at paragraph (ii)(i) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this contract.

(d) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor’s CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the EFT clause of this contract.

(e) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at http://www.ccr.gov or by calling 1-888-227-2423 or 202-501-5757.

(End of clause)

Alternate I (OCT 2008). When a time-and-materials or labor-hour contract is contemplated, substitute the following paragraphs (a), (e), (l) and (i) for those in the basic clause.

(a) Inspection/Acceptance. (1) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government will perform inspections and tests in a manner that will not unduly delay the work.

(2) If the Government performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the “hourly rate” for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the “hourly rate” attributable to profit shall be 10 percent. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken. [Insert portion of labor rate attributable to profit.]

(b) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute under the Disputes clause of the contract.

(c) Notwithstanding paragraphs (a)(4) and (5) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the
Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to—

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(b) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(b) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(e) Definitions. (1) The clause at FAR 52.202-1, Definitions, is incorporated herein by reference. As used in this clause—

(A) Direct materials mean those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(B) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

(i) Materials mean any contract, as defined in FAR Subpart 2.1, entered into with a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or affiliates of a contractor or subcontractor, and modifications to purchase orders.

(B) Subcontracts for supplies and incidental services for which is not a labor category specified in the contract.

(C) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);

(D) The following subcontracts for services which are specifically excluded from the hourly rate: [Insert any subcontracts for services to be excluded from the hourly rates prescribed in the schedule]; and

(E) Indirect costs specifically provided for in this clause.

(iv) Subcontract means any contract, as defined in FAR Subpart 2.1, entered into with a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or affiliates of a contractor or subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(i) Payments. (1) Services accepted. Payment shall be made for services accepted by the Government that have been delivered to the delivery destination(s) set forth in this contract. The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

(A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.

(B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

(C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer or the authorized representative.

(D) When requested by the Contracting Officer or the authorized representative, the Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. (i) If the Schedule provides rates for overtime, the premium portion of those rates shall be negotiated.

(ii) Materials.

(A) If the Contractor furnishes materials that meet the definition of a commercial item at FAR 2.101, the price to be paid for...
such materials shall be the contractor's established catalog or market price, adjusted to reflect the—

(i) Quantities being acquired; and

(ii) Any markdowns necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor—

(i) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(ii) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.

(C) To the extent able, the Contractor shall—

(i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(ii) Give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.

(D) Other Costs. Unless listed below, other direct and indirect costs will not be reimbursed.

(1) Other Direct Costs. The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: [Insert each element of other direct costs (e.g., travel, computer usage charges, etc. Insert "None" if no reimbursement for other direct costs will be provided. If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the elements of other direct charge(s) for that order or, if no reimbursement for other direct costs will be provided, insert 'None'.")]

(2) Indirect Costs (Material Handling, Subcontract Administration, etc.). The Government will reimburse the Contractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price: [Insert a fixed amount for the indirect costs and payment schedule. Insert "None" if no fixed price reimbursement for indirect costs will be provided. (i) This is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the fixed amount for the indirect costs and payment schedule or, if no reimbursement for indirect costs, insert 'None'.")]

(3) Total cost. It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 50 percent of the ceiling price set forth in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(3) Ceiling price. The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) Access to records. At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):

(i) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;

(ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment—
Federal Acquisition Regulation
52.212-4

(A) The original timecards (paper-based or electronic);
(B) The Contractor’s timekeeping procedures;
(C) Contractor records that show the distribution of labor between jobs or contracts; and
(D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost—
(A) Any invoices or subcontract agreements substantiating material costs; and
(B) Any documents supporting payment of those invoices.

(5) Overpayments/Underpayments. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The Contractor’s payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall—
(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—
(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
(B) Affected contract number and delivery order number, if applicable;
(C) Affected contract line item or subline item, if applicable; and
(D) Contractor point of contact.
(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(b)(1) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six month period as established by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final Decisions. The Contracting Officer will issue a final decision as required by 33.211 if—
(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;
(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or
(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see FAR 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:
(A) The date fixed under this contract.
(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—
(A) The date on which the designated office receives payment from the Contractor;
(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(viii) Upon receipt and approval of the invoice designated by the Contractor as the “completion invoice” and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion of the work.

(7) Release of claims. The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and
as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

4. Prompt payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

Termination for the Government’s convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor’s records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

As prescribed in 12.301(b)(4), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (SEP 2009)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).
(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate.]

(2) 52.203–13, Contractor Code of Business Ethics and Conduct (DEC 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).
Federal Acquisition Regulation

52.212–5


(6) 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JUL 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

(7) [Reserved]


(9)(iii) Alternate II (MAR 2004) of 52.219–6.

(10) 52.219–8, Utilization of Small Business Concerns (MAY 2004) (15 U.S.C. 637(d)(2) and (3)).

(11)(i) 52.219–9, Small Business Subcontracting Plan (APR 2008) (15 U.S.C. 637(d)(4)).


(11)(iii) Alternate II (OCT 2001) of 52.219–9.


(14)(i) 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer.)


(18) 52.219–28, Post Award Small Business Program Rerepresentation (APR 2009) (15 U.S.C. 652a(vi)).


(20) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (Aug 09) (E.O. 13126).

(21) 52.222–21, Prohibition of Segregated Facilities (FEB 1999).

(22) 52.222–26, Equal Opportunity (MAR 2007) (E.O. 11246).


(26) 52.222–39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

(27) 52.222–34, Employment Eligibility Verification (JAN 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22180.

(28)(i) 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(I)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

(28)(ii) Alternate I (May 2008) of 52.223–9 (42 U.S.C. 6962(1)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)


(36) 52.226–5, Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) (42 U.S.C. 5150).


(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate.]

(8) 52.227-11, Accepting and Dispensing of $1 Coin (SEP 2008) (31 U.S.C. 5112(p)(1)).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (DEC 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 231 note)).
(ii) 52.209-6, Utilization of Small Business Concerns (October 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $550,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
(iii) [Reserved]
(iv) 52.222-26, Equal Opportunity (MAR 2008) (E.O. 11246).
(vii) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).
(ix) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).
(xi) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for
Federal Acquisition Regulation

52.212–5

Certain Services-Requirements (FEB 2009) (41 U.S.C. 351, et seq.).

(xii) 52.222–54, Employment Eligibility Verification (Jan 2009).


(xiv) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247–64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

Alternate I (FEB 2000). As prescribed in 12.301(b)(4), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause”.

Alternate II (MAY 2009). As prescribed in 12.301(b)(4)(i), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

(d)(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials shall have access to and right to—

(i) Examine any of the Contractor’s or any subcontractors’ records that pertain to, and involve transactions relating to, this contract; and

(ii) Interview any officer or employee regarding such transactions.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for commercial items, other than—

(i) Paragraph (d) of this clause. This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(i) does not flow down; and

(ii) Those clauses listed in this paragraph (e)(1). Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(A) 52.203–13, Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110–252, Title VI, Chapter 1 (41 U.S.C. 251 note)).


(C) 52.219–8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $550,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(D) 52.222–26, Equal Opportunity (Mar 2007) (E.O. 11246).


(G) 52.222–39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).


(I) 52.222–50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).


(L) 52.222–54, Employment Eligibility Verification (Jan 2009).


(N) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 1241(b) and 10 U.S.C. 2631).
52.213-1 Fast Payment Procedure.

As prescribed in 13.404, insert the following clause:

FAST PAYMENT PROCEDURE (MAY 2006)

(a) General. The Government will pay invoices based on the Contractor's delivery to a post office or common carrier (or, if shipped by other means, to the point of first receipt by the Government).

(b) Responsibility for supplies. (1) Title to the supplies passes to the Government upon delivery to—

(i) A post office or common carrier for shipment to the specific destination; or

(ii) The point of first receipt by the Government, if shipment is by means other than Postal Service or common carrier.

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall—

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor's expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(c) Preparation of invoice. (1) Upon delivery to a post office or common carrier (or, if shipped by other means, the point of first receipt by the Government), the Contractor shall—

(i) Prepare an invoice as provided in this contract, order, or blanket purchase agreement; and

(ii) Display prominently on the invoice "FAST PAY." Invoices not prominently marked "FAST PAY" via manual or electronic means may be accepted by the payment office for fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The Contractor shall not include the cost of parcel post insurance. If transportation charges are stated separately on the invoice, the Contractor shall retain related paid freight bills or other transportation billings paid separately for a period of 3 years and shall furnish the bills to the Government upon request.

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report, the Contractor shall either—

(i) Submit the receiving report on the prescribed form with the invoice; or

(ii) Include the following information on the invoice:

(A)Shipments number.

(B) Mode of shipment.

(C) At line item level—

(1) National stock number and/or manufacturer's part number;

(2) Unit of measure;

(3) Ship-To Point;

(4) Mark-For Point, if in the contract; and

(5) FEDSTRIP/MILSTRIP document number, if in the contract.

(4) If this contract, order, or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the Contractor shall include on the invoice the following information at the line item level, in addition to that required in paragraph (c)(1) of this clause:

(i) Ship-To Point.

(ii) Mark-For Point.

(iii) FEDSTRIP/MILSTRIP document number, if in the contract.

(5) Where a receiving report is not required, the Contractor shall include a copy of the invoice in each shipment.
(d) Certification of invoice. The Contractor certifies by submitting an invoice to the Government that the supplies being billed to the Government have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated by the contract, order, or blanket purchase agreement.

(e) FAST PAY container identification. The Contractor shall mark all outer shipping containers “FAST PAY.” When outer shipping containers are not marked “FAST PAY,” the payment office may make fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(End of clause)


52.213–2 Invoices.

As prescribed in 13.302–5(b), insert the following clause:

INVOICES (APR 1984)

The Contractor’s invoices must be submitted before payment can be made. The Contractor will be paid on the basis of the invoice, which must state (a) the starting and ending dates of the subscription delivery, and (b) either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.

(End of clause)


52.213–3 Notice to Supplier.

As prescribed in 13.302–5(c), insert the following clause:

NOTICE TO SUPPLIER (APR 1984)

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Contracting Officer. If you cannot perform in exact accordance with this order, WITHHOLD PERFORMANCE and notify the Contracting Officer immediately, giving your quotation.

(End of clause)


52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items)

As prescribed in 13.302–5(d), insert the following clause:

TERMS AND CONDITIONS—SIMPPLIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222–3, Convict Labor (JUN 2003) (E.O. 11755).

(ii) 52.222–21, Prohibition of Segregated Facilities (FEB 1999) (E.O. 11246).

(iii) 52.222–26, Equal Opportunity (MAR 2007) (E.O. 11246).

(iv) 52.222–50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(c)).

(v) 52.225–13, Restrictions on Certain Foreign Purchases (FEB 2006) (E.O.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(vi) 52.244–4, Subcontracts for Commercial Items (Aug 11, 2009).

(vii) 52.233–1, Disputes (JUL 2002).

(2) Listed below are additional clauses that apply:

(1) 52.232–1, Payments (APR 1984).

(2) 52.232–8, Discounts for Prompt Payment (FEB 2002).

(3) 52.232–11, Extras (APR 1984).

(4) 52.232–25, Prompt Payment (OCT 2008).

(5) 52.233–1, Disputes (JUL 2002).

(6) 52.244–4, Subcontracts for Commercial Items (Aug. 11, 2009).

(vii) 52.233–1, Computer Generated Forms (JAN 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (Aug 09) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)


73
52.213-4

(iii) 52.223-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006) (38 U.S.C. 4212) (Applies to contracts of $100,000 or more).

(iv) 52.223-36, Affirmative Action for Workers with Disabilities (June 1996) (29 U.S.C. 795). (Applies to contracts over $10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, United States includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(v) 52.223-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006) (38 U.S.C. 4212) (Applies to contracts of $100,000 or more).

(vi) 52.223-41, Service Contract Act of 1965 “(Nov 2007)” (41 U.S.C. 351, et seq.). (Applies to service contracts over $2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands.

(vii) 52.223-5, Pollution Prevention and Right-to-Know Information (AUG 2003) (E.O. 13148) (Applies to services performed on Federal facilities).

(viii) 52.223-15, Energy Efficiency in Energy-Consuming Products (DEC 2007) (42 U.S.C. 8259b) (Unless exempt pursuant to 23.204, applies to contracts when energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP) will be—

(A) Delivered;
(B) Acquired by the Contractor for use in performing services at a Federally-controlled facility;
(C) Furnished by the Contractor for use by the Government; or
(D) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(ix) 52.223-1, Buy American Act—Supplies (FEB 2009) (41 U.S.C. 18a–18d) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition:

(A) Is set aside for small business concerns; or
(B) Cannot be set aside for small business concerns (see 19.502–2), and does not exceed $25,000.)

(x) 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2006). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)

(xi) 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

(xii) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at 47.306(e)).) (2) Listed below are additional clauses that may apply:

(i) 52.209–4, Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (SEP 2006) (Applies to contracts over $30,000).

(ii) 52.211–17, Delivery of Excess Quantities (SEP 1989) (Applies to fixed-price supplies).

(iii) 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations. (MAR 2009) (Pub. L. 110–247) (Applies to contracts greater than $25,000 that provide for the provision, the service, or the sale of food in the United States.)

(iv) 52.247–29, F.o.b. Origin (FEB 2006) (Applies to supplies if delivery is f.o.b. origin).

(v) 52.247–34, F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) FAR 52.252–2, Clauses Incorporated by Reference (FEB 1998). This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(d) Inspection/Acceptance. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights—

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) Excusable delays. The Contractor shall be liable for default unless nonperformance
Termination for the Government’s convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor may demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. This paragraph does not give the Government any right to audit the Contractor’s records. The Contractor shall not be required to comply with any contract terms and conditions which are not modified by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(b) Warranty. The Contractor warrants and warranty that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

End of clause.

52.214-3 Amendments to Invitations for Bids.

As prescribed in 14.201–6(b)(1), insert the following provision:

AMENDMENTS TO INVITATIONS FOR BIDS (DEC 1989)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

End of provision.

52.214-4 False Statements in Bids.

As prescribed in 14.201–6(b)(2), insert the following provision in all invitations for bids:

Federal Acquisition Regulation

is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) Termination for cause. The Government reserves the right to terminate this contract, or any part hereof, for default, such termination shall be lawful if it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(g) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of provision)
FALSE STATEMENTS IN BIDS (APR 1984)

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(End of provision)

52.214–5 Submission of Bids.

As prescribed in 14.201–6(c)(1), insert the following provision:

SUBMISSION OF BIDS (MAR 1997)

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) (1) addressed to the office specified in the solicitation, and (2) showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in subparagraphs (a) (1) and (2) of this provision when delivered to the office specified in the solicitation.

(c) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice.

(d) Facsimile bids, modifications, or withdrawals, will not be considered unless authorized by the solicitation.

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

(End of provision)

52.214–6 Explanation to Prospective Bidders.

As prescribed in 14.201–6(c)(2), insert the following provision:

EXPLANATION TO PROSPECTIVE BIDDERS (APR 1984)

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

(End of provision)

52.214–7 Late submissions, modifications, and withdrawals of bids.

As prescribed in 14.201–6(c)(3), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (NOV 1999)

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government’s control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB and urgent Government requirements preclude amendment of the IFB, the time specified for
receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at 52.214-31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

[64 FR 51840, Sept. 24, 1999]

52.214-8—52.214-9 [Reserved]

52.214-10 Contract Award—Sealed Bidding.

As prescribed in 14.201-6(e), insert the following provision:

CONTRACT AWARD—SEALED BIDDING (JUL 1990)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may (1) reject any or all bids, (2) accept other than the lowest bid, and (3) waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid.

(d) A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid shall result in a binding contract without further action by either party.

(e) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)


52.214-11 [Reserved]

52.214-12 Preparation of Bids.

As prescribed in 14.201-6(f), insert the following provision:

PREPARATION OF BIDS (APR 1984)

(a) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the bidder's risk.

(b) Each bidder shall furnish the information required by the solicitation. The bidder shall sign the bid and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(c) For each item offered, bidders shall (1) show the unit price, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price for the quantity of each item offered in the Amount column of the Schedule. In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(e) Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.

(f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

(End of provision)

52.214–13 Telegraphic Bids.

As prescribed in 14.201–6(g)(1), insert the following provision:

**TELEGRAPHIC BIDS (APR 1984)**

(a) Bidders may submit telegraphic bids as responses to this solicitation. These responses must arrive at the place, and by the time, specified in the solicitation.

(b) Telegraphic bids shall refer to this solicitation and include the items or subitems, quantities, unit prices, time and place of delivery, all representations and other information required by this solicitation, and a statement of agreement with all the terms, conditions, and provisions of the invitation for bids.

(c) Telegraphic bids that fail to furnish required representations or information, or that reject any of the terms, conditions, and provisions of the solicitation, may be excluded from consideration.

(d) Bidders must promptly sign and submit complete copies of the bids in confirmation of their telegraphic bids.

(e) The term telegraphic bids, as used in this provision, includes mailgrams.

(End of provision)

**Alternate I (NOV 1988).** As prescribed in 14.201–6(g)(2), substitute the following for paragraph (d) of the basic clause:

(d) Written confirmation of telegraphic bids is not required.


52.214–15 Period for Acceptance of Bids.

As prescribed in 14.201–6(i), insert the following provision:

**PERIOD FOR ACCEPTANCE OF BIDS (APR 1984)**

In compliance with the solicitation, the bidder agrees, if this bid is accepted within ______ calendar days (60 calendar days unless a different period is inserted by the bidder) from the date specified in the solicitation for receipt of bids, to furnish any or all items upon which prices are bid at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.

(End of provision)


52.214–16 Minimum Bid Acceptance Period.

As prescribed in 14.201–6(j), insert the following provision in invitations for bids, except for construction, if the contracting officer determines that a minimum acceptance period must be specified:

**MINIMUM BID ACCEPTANCE PERIOD (APR 1984)**

(a) Acceptance period, as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of ______ calendar days [the Contracting Officer shall insert the number of days].

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government’s minimum requirement.
Federal Acquisition Regulation

52.214–20

THE BIDDER ALLOWS THE FOLLOWING ACCEPTANCE PERIOD: __ CALENDAR DAYS.

(e) A bid allowing less than the Government’s minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (e) above or (2) any longer acceptance period stated in paragraph (d) above.

(End of provision)

52.214–17 [Reserved]

52.214–18 Preparation of Bids—Construction.

As prescribed in 14.201–6(l), insert the following provision:

PREPARATION OF BIDS—CONSTRUCTION (APR 1984)

(a) Bids must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing a bid must initial each endorsement or change appearing on any bid form.

(b) The bid form may require bidders to submit bid prices for one or more items on various bases, including—

(1) Lump sum bidding;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (1) through (3) above.

(c) If the solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words no bid in the space provided for any item on which no price is submitted.

(d) Alternate bids will not be considered unless this solicitation authorizes their submission.

(End of provision)

52.214–19 Contract Award—Sealed Bidding—Construction.

As prescribed in 14.201–6(m), insert the following provision:

CONTRACT AWARD—SEALED BIDDING—CONSTRUCTION (AUG 1996)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may reject any or all bids, and waive informality or minor irregularities in bids received.

(c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.

(d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)

52.214–20 Bid Samples.

As prescribed in 14.201–6(o)(1), insert the following provision:

BID SAMPLES (APR 2002)

(a) Bid sample means a product sample required to be submitted by a bidder to show those characteristics of the offered products that cannot adequately be described by specifications, purchase descriptions, or the invitation for bid (e.g., balance, facility of use, or pattern).

(b) Bidders must furnish bid samples as part of the bid. The Government must receive the bid samples by the time specified in the invitation for bids. If the bidder fails to submit samples on time, the Government will reject the bid, except that the Contracting Officer will consider a late sample sent by mail under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(c) The Government will test or evaluate bid samples to determine compliance with all the characteristics listed for examination in this solicitation. The Government will reject the bid when the sample fails to conform to the required characteristics. Products delivered under any resulting contract must conform to—

(1) the approved sample for the characteristics listed for test or evaluation and

(2) the specifications for all other characteristics.

(d) Unless otherwise specified in the solicitation, bid samples shall be (1) submitted at
52.214–21

Descriptive Literature.

As prescribed in 14.201–6(p)(1), insert the following provision:

DESCRIPTIVE LITERATURE (APR 2002)

(a) Descriptive literature, as used in this provision, means information furnished by a bidder, such as cuts, illustrations, drawings, and brochures, that shows a product’s characteristics or construction or explains its operation. The term includes only that information required to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

(b) Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in the solicitation and pertain to significant elements such as—

(1) Design;
(2) Materials;
(3) Components;
(4) Performance characteristics; and
(5) Methods of manufacture, assembly, construction, or operation.

(e) At the discretion of the Contracting Officer, the requirements for furnishing bid samples may be waived for a bidder if (1) the bid states that the offered product is the same as a product offered by the bidder to the Government that was accepted or tested and found to comply with the previously acquired or tested product, (2) the Contracting Officer determines that the previously offered product was accepted or tested and found to comply with specification and other requirements for technical acceptability conforming in every material respect with those in this solicitation, (3) the product offered under this solicitation will be produced under a reprocurement or modification of a previously supplied product under a prior contract, and (4) the Contracting Officer determines that the previously offered product was accepted or tested and found to comply with the previously acquired or tested product and the requirements of the solicitation, the Government will reject the bid, except that late descriptive literature sent by mail may be considered to have been submitted on time, the Government will reject the bid, except that late descriptive literature otherwise required to establish, for the purpose of evaluation and award, details of the product offered that are specified in the solicitation shall be—

(1) Identified to show the item(s) of the offer to which it applies; and
(2) Received by the time specified in this solicitation.

(f) The Contracting Officer may waive the requirement for furnishing descriptive literature if the offeror has supplied a product that is the same as that required by this solicitation under a prior contract. A bidder that requests a waiver of this requirement shall provide the following information:

<table>
<thead>
<tr>
<th>Prior contract number</th>
<th>Date of prior contract</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Contract line item number of product supplied</td>
</tr>
<tr>
<td></td>
<td>Name and address of Government activity to which delivery was made</td>
</tr>
<tr>
<td></td>
<td>Date of final delivery product supplied</td>
</tr>
</tbody>
</table>

(g) Bidders shall submit bids on the basis of required descriptive literature or on the basis of a previously supplied product under paragraph (f) of this provision. A bidder submitting a bid on one of these two bases may not elect to have its bid considered on the alternative basis after the time specified for receipt of bids. The Government will disregard a bidder’s request for a waiver under paragraph (f) if that bidder has submitted the descriptive literature requested under this solicitation.

[67 FR 13056, Mar. 20, 2002]
Federal Acquisition Regulation

52.214-22 Evaluation of Bids for Multiple Awards.

As prescribed in 14.201-6(q), insert the following provision:

**Evaluation of Bids for Multiple Awards**

In addition to other factors, bids will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating bids, that $500 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation, and individual awards will be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(End of provision)


52.214-23 Late submissions, modifications, revisions, and withdrawals of technical proposals under two-step sealed bidding.

As prescribed in 14.201-6(r), insert the following provision:

**Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding**

(a) Bidders are responsible for submitting technical proposals, and any modifications or revisions, so as to reach the Government office designated in the request for technical proposals by the time specified in the invitation for bids (IFB). If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids or revisions are due.

(b)(1) Any technical proposal under step one of two-step sealed bidding or modification, revision, or withdrawal of such proposal received at the Government office designated in the request for technical proposals after the exact time specified for receipt will not be considered unless the Contracting Officer determines that accepting the late technical proposal would not unduly delay the acquisition; and

(i) If it was transmitted through an electronic commerce method authorized by the Federal Acquisition Regulation 52.214–24, Multiple Technical Proposals.

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government’s control prior to the time set for receipt; or

(iii) It is the only proposal received and it is negotiated under part 15 of the Federal Acquisition Regulation.

(b) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the technical proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that technical proposals cannot be received at the Government office designated for receipt of technical proposals by the exact time specified in the request for technical proposals, and urgent Government requirements preclude amendment of the request for technical proposals, the time specified for receipt of technical proposals will be deemed to be extended to the same time of day specified in the request for technical proposals on the first work day on which normal Government processes resume.

(e) Technical proposals may be withdrawn by written notice received at any time before the exact time set for receipt of technical proposals. If the request for technical proposals authorizes facsimile technical proposals, they may be withdrawn via facsimile received at any time before the exact time set for receipt of proposals, subject to the conditions specified in the provision at 52.214-31, Facsimile Bids. A technical proposal may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of technical proposals, the identity of the person requesting withdrawal is established and the person signs a receipt for the technical proposal.

(End of provision)

[64 FR 53840, Sept. 24, 1999]

52.214-24 Multiple Technical Proposals.

As prescribed in 14.201-6(s), insert the following provision:

**Multiple Technical Proposals**

In the first step of this two-step acquisition, solicited sources are encouraged to submit multiple technical proposals presenting different basic approaches. Each technical
52.214–25 Audit and Records—Sealed Bidding.

As prescribed in 14.201–7(a), insert the following clause:

AUDIT AND RECORDS—SEALED BIDDING (MAR 2009)

(a) As used in this clause, records includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to—

(1) The proposal for the modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the modification; or

(4) Performance of the modification.

(c) Comptroller General. In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause and also the right to interview any current employee regarding such transactions.

(d) Availability. The Contractor shall make available at its office at all reasonable times the materials described in paragraph (b) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed the threshold in FAR 15.403–4(a)(1) for submission of cost or pricing data.

(End of clause)

Alternate I (MAR 2009). As prescribed in 14.201–7(a)(2), substitute the following paragraphs (c) and (e) for paragraphs (c) and (e) of the basic clause:

(c) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to—

(1) Examine any of the Contractor’s or any subcontractors’ records that pertain to, and involve transactions relating to, this contract or a subcontract hereunder; and

(2) Interview any officer or employee regarding such transactions.

(e)(1) Except as provided in paragraph (e)(2), the Contractor shall insert a clause containing the provisions of this clause, including this paragraph (e), in all subcontracts.

(End of clause)
Federal Acquisition Regulation

52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.

As prescribed in 14.201-7(b), insert the following clause:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of cost or pricing data at FAR 15.403-4(a)(1), except that this clause does not apply to a modification if an exception under FAR 15.403-1(b) applies.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) above.

(c) Any reduction in the contract price under paragraph (b) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense—

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of any item procured under the contract; or

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) Except as prohibited by subdivision (d)(2)(i) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.
52.214–28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.

As prescribed in 14.201–7(c), insert the following clause:

SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.403–4(a)(1), and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403–4(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403–1(b) applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in subsection 15.406–2 of the Federal Acquisition Regulation that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of cost or pricing data at FAR 15.403–4(a)(1).

52.214–29 Order of Precedence—Sealed Bidding.

As prescribed in 14.201–7(d), insert the following clause:

ORDER OF PRECEDENCE—SEALED BIDDING (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

52.214–30 [Reserved]

52.214–31 Facsimile Bids.

As prescribed in 14.201–6(v), insert the following provision:

FACSIMILE BIDS (DEC 1989)

(a) Definition. Facsimile bid, as used in this solicitation, means a bid, modification of a bid, or withdrawal of a bid that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Bidders may submit facsimile bids as responses to this solicitation. These responses must arrive at the place and by the time, specified in the solicitation.

(c) Facsimile bids that fail to furnish required representations or information or that reject any of the terms, conditions, and provisions of the solicitation may be excluded from consideration.

(d) Facsimile bids must contain the required signatures.

(e) The Government reserves the right to make award solely on the facsimile bid. However, if requested to do so by the Contracting Officer, the apparently successful bidder agrees to promptly submit the complete original signed bid.

(f) Facsimile receiving data and compatibility characteristics are as follows:

(1) Telephone number of receiving facsimile equipment:

(2) Compatibility characteristics of receiving facsimile equipment (e.g., make and model number, receiving speed, communications protocol):

(g) If the bidder chooses to transmit a facsimile bid, the Government will not be responsible for any failure attributable to the
Federal Acquisition Regulation

52.215–1

transmission or receipt of the facsimile bid including, but not limited to, the following:

1. Receipt of garbled or incomplete bid.
2. Availability or condition of the receiving facsimile equipment.
3. Incompatibility between the sending and receiving equipment.
4. Delay in transmission or receipt of bid.
5. Failure of the bidder to properly identify the bid.
6. Illegibility of bid.
7. Security of bid data.

(End of provision)

[54 FR 48992, Nov. 28, 1989, as amended at 64 FR 51841, Sept. 24, 1999]

52.214–32—52.214–33 [Reserved]

52.214–34 Submission of Offers in the English Language.

As prescribed in 14.201–6(w), insert the following provision:

SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(End of provision)


52.214–35 Submission of Offers in U.S. Currency.

As prescribed in 14.201–6(x), insert the following provision:

SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(End of provision)


52.215–1 Instructions to Offerors—Competitive Acquisition.

As prescribed in 15.209(a), insert the following provision:

INSTRUCTIONS TO OFFERORS—COMPETITIVE ACQUISITIONS (JAN 2004)

(a) Definitions. As used in this provision—

Discussions are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer’s discretion, result in the offeror being allowed to revise its proposal.

In writing, writing, or written means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

Proposal modification is a change made to a proposal before the solicitation’s closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

Proposal revision is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

Time, if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) Amendments to solicitations. If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) Submission, modification, revision, and withdrawal of proposals. (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the Office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show—

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate

85
on the offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by the offeror, or an agent formally designated by the offeror shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

Submission, modification, revision, and withdrawal of proposals. (i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) Any proposal, modification, or revision, received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first working day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitation may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) Offer expiration date. Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) Restriction on disclosure and use of data. Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall—

(1) Mark the title page with the following legend: This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and

(2) Mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.
Federal Acquisition Regulation

52.215-1

(1) Contract award. (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(i) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(iv) A summary of the rationale for award.

(v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

Alternate I (OCT 1997). As prescribed in 15.209(a)(1), substitute the following paragraph (f)(4) for paragraph (f)(4) of the basic provision:

(f)(4) The Government intends to evaluate proposals and award a contract after conducting discussions with offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

Alternate II (OCT 1997). As prescribed in 15.209(a)(2), add a paragraph (c)(9) substantially the same as the following to the basic clause:

(9) Offerors may submit proposals that depart from stated requirements. Such proposals shall clearly identify why the acceptance of the proposal would be advantageous to the Government. Any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the Government, shall be clearly identified and explicitly defined. The Government reserves the right to amend the solicitation to allow
52.215-2 Audit and Records—Negotiation.

As prescribed in 15.209(b), insert the following clause:

AUDIT AND RECORDS—NEGOTIATION (MAR 2009)

(a) As used in this clause, records includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeemable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor’s plants, or parts of them, engaged in performing the contract.

(c) Cost or pricing data. If the Contractor has been requested to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to—

(1) The proposal for the contract, subcontract, or modification; or
(2) The discussions conducted on the proposal(s), including those related to negotiating;
(3) Pricing of the contract, subcontract, or modification; or
(4) Performance of the contract, subcontract or modification.

(d) Comptroller General. (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor’s directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor’s policies and procedures to produce data compatible with the objectives of this contract, and (2) the data reported.

(f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence required for examinations and audits, including this paragraph (a), in all subcontracts under this contract that exceed the simplified acquisition threshold and—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after final termination settlement; and
(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (a), in all subcontracts under this contract that exceed the simplified acquisition threshold and—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeemable type or any combination of these;
(2) For which cost or pricing data are required; or
(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

Alternate I (MAR 2009). As prescribed in 15.209(b)(2), substitute the following paragraphs (d)(1) and (g) for paragraphs (d)(1) and (g) of the basic clause:

(d) Comptroller General or Inspector General. (1) The Comptroller General of the United
Federal Acquisition Regulation

States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to—

(i) Examine any of the Contractor’s or any subcontractor’s records that pertain to and involve transactions relating to this contract or a subcontract hereunder; and

(ii) Interview any officer or employee regarding such transactions.

(g)(1) Except as provided in paragraph (g)(2) of this clause, the Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract. The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(2) The authority of the Inspector General under paragraph (d)(1)(ii) of this clause does not flow down to subcontracts.

Alternate II (APR 1998). As prescribed in 15.209(b)(3), add the following paragraph (h) to the basic clause:


Alternate III (JUN 1999). As prescribed in 15.209(b)(4), delete paragraph (d) of the basic clause and redesignate the remaining paragraphs accordingly, and substitute the following paragraph (e) for the redesignated paragraph (e) of the basic clause:

(e) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), and (d) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

1. If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

2. The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.


52.215-3 Request for Information or Solicitation for Planning Purposes.

As prescribed in 15.209(c), insert the following provision:

REQUEST FOR INFORMATION OR SOLICITATION FOR PLANNING PURPOSES (OCT 1997)

(a) The Government does not intend to award a contract on the basis of this solicitation or to otherwise pay for the information solicited except as an allowable cost under other contracts as provided in sub-section 31.205-18, Bid and proposal costs, of the Federal Acquisition Regulation.

(b) Although “proposal” and “offeror” are used in this Request for Information, your response will be treated as information only. It shall not be used as a proposal.

(c) This solicitation is issued for the purpose of: [state purpose].

(End of provision)


52.215-4 [Reserved]

52.215-5 Facsimile Proposals.

As prescribed in 15.209(e), insert the following provision:

FACSIMILE PROPOSALS (OCT 1997)

(a) Definition. Facsimile proposal, as used in this provision, means a proposal, revision or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

(b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile proposals are subject to the same rules as paper proposals.

(c) The telephone number of receiving facsimile equipment is: [insert telephone number].

(d) If any portion of a facsimile proposal received by the Contracting Officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document—

1. The Contracting Officer shall notify the offeror and permit the offeror to resubmit the proposal.
52.215–6

(2) The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror; and

(3) The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the Contracting Officer.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete original signed proposal.

(End of provision)


52.215–6 Place of Performance.

As prescribed in 15.209(f), insert the following provision:

PLACE OF PERFORMANCE (OCT 1997)

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation,

\(\square\) intends, \(\square\) does not intend [check applicable block] to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

(b) If the offeror or respondent checks “intends” in paragraph (a) of this provision, it shall insert in the following spaces the required information:

<table>
<thead>
<tr>
<th>Place of performance (street address, city, state, county, zip code)</th>
<th>Name and address of owner and operator of the plant or facility if other than offeror or respondent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(End of provision)


52.215–7 [Reserved]

52.215–8 Order of Precedence—Uniform Contract Format.

As prescribed in 15.209(h), insert the following clause:

ORDER OF PRECEDENCE—UNIFORM CONTRACT FORMAT (OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications);

(b) Representations and other instructions;

(c) Contract clauses;

(d) Other documents, exhibits, and attachments;

(e) The specifications.

(End of clause)


52.215–9 Changes or Additions to Make-or-Buy Program.

As prescribed in 15.408(a), insert the following clause:

CHANGES OR ADDITIONS TO MAKE-OR-BUY PROGRAM (OCT 1997)

(a) The Contractor shall perform in accordance with the make-or-buy program incorporated in this contract. If the Contractor proposes to change the program, the Contractor shall, reasonably in advance of the proposed change, (1) notify the Contracting Officer in writing, and (2) submit justification in sufficient detail to permit evaluation. Changes in the place of performance of any “make” items in the program are subject to this requirement.

(b) For items deferred at the time of negotiation of this contract for later addition to the program, the Contractor shall, at the earliest possible time—

(1) Notify the Contracting Officer of each proposed addition; and

(2) Provide justification in sufficient detail to permit evaluation.

(c) Modification of the make-or-buy program to incorporate proposed changes or additions shall be effective upon the Contractor’s receipt of the Contracting Officer’s written approval.

(End of clause)

Alternate I (OCT 1997). As prescribed in 15.408(a)(1) add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of “make” or “buy” for any item or items designated in the contract as subject to this paragraph, it shall—

(1) Support its proposal with cost or pricing data when permitted and necessary to support evaluation; and

(2) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract price in accordance with paragraph (k) of the Incentive Price Revision—Firm Target clause or paragraph (m) of the Incentive Price Revision—Successive Targets clause of this contract.

Alternate II (OCT 1997). As prescribed in 15.408(a)(2), add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of “make” or “buy” for any item or items designated in the contract as subject to this paragraph, it shall—

(1) Support its proposal with cost or pricing data when permitted and necessary to support evaluation; and

(2) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract price in accordance with paragraph (k) of the Incentive Price Revision—Firm Target clause or paragraph (m) of the Incentive Price Revision—Successive Targets clause of this contract.
Federal Acquisition Regulation

(d) If the Contractor desires to reverse the categorization of “make” or “buy” for any item or items designated in the contract as subject to this paragraph, it shall—

(1) Support cost or pricing data to permit evaluation; and
(2) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract’s total estimated cost and fee in accordance with paragraph (e) of the Incentive Fee clause of this contract.


52.215-10 Price Reduction for Defective Cost or Pricing Data.

As prescribed in 15.408(b), insert the following clause:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

(OCT 1997)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor’s Certificate of Current Cost or Pricing Data; or
(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—

(1) The actual subcontract; or
(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.
(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
(2)(i) Except as prohibited by subdivision (c)(2)(1) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor’s knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
(B) The Contractor proves that the cost or pricing data were available before the “as of” date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the “as of” date specified on its Certificate of Current Cost or Pricing Data; or
(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the “as of” date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

52.215–11 Price Reduction for Defective Cost or Pricing Data—Modifications.

As prescribed in 15.408(c), insert the following clause:

PRICING DATA—MODIFICATIONS (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.409–4, except that this clause does not apply to any modification if an exception under FAR 15.409–1 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor’s Certificate of Current Cost or Pricing Data, (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) Except as prohibited by subdivision (d)(2)(i) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor’s knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the costs or pricing data were available before the “as of” date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the “as of” date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

52.215-12 Subcontractor Cost or Pricing Data.

As prescribed in 15.408(d), insert the following clause:

SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data—Modifications.

(End of clause)


52.215-14 Integrity of Unit Prices.

As prescribed in 15.408(f)(1), insert the following clause:

INTEGRITY OF UNIT PRICES (OCT 1997)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items’ base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will not manufacture or contribute significant value.

(c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.
52.215–15 Pension adjustments and asset reversions.

As prescribed in 15.408(g), insert the following clause:

PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004)

(a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—

1. For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12); and

2. For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

(c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government’s option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government’s equitable share shall reflect the Government’s participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.

(d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

52.215–16 Facilities Capital Cost of Money.

As prescribed in 15.408(h), insert the following provision:

WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997)

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

52.215–17 Waiver of Facilities Capital Cost of Money.

As prescribed in 15.408(i), insert the following clause:

WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997)

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

52.215–18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.

As prescribed in 15.408(j), insert the following clause:

REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)

(a) The Contractor shall promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce the benefits of a PRB plan.
Federal Acquisition Regulation

52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.

As prescribed in 15.408(1), insert the following provision:

REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997)

(a) Exceptions from cost or pricing data. (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) Commercial item exception. For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include—

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(End of clause)
(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other direct or pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror’s determination of the prices to be offered in the catalog or marketplace.

(b) Requirements for cost or pricing data. If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall prepare and submit cost or pricing data and supporting attachments in accordance with Table 15–2 of FAR 15.406.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406–2.

(End of provision)

Alternate I (OCT 1997). As prescribed in 15.408(1), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) The offeror shall submit cost or pricing data and supporting attachments in the following format:

Alternate II (OCT 1997). As prescribed in 15.408(l), add the following paragraph (c) to the basic provision:

(c) When the proposal is submitted, also submit one copy each to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (OCT 1997). As prescribed in 15.408(l), add the following paragraph (c) to the basic provision (if Alternate II is also used, redesignate the following paragraph as paragraph (d)).

(c) Submit the cost portion of the proposal via the following electronic media: [Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.]

Alternate IV (OCT 1997). As prescribed in 15.408(l), replace the text of the basic provision with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: [Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.403–3.]


52.215–21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.

As prescribed in 15.408(m), insert the following clause:

REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA—MODIFICATIONS (OCT 1997)

(a) Exceptions from cost or pricing data. (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403–4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(1) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(2) Information on modifications of contracts or subcontracts for commercial items. (A) If—

(1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include—

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a
Federal Acquisition Regulation

52.216-2

statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor’s determination of the prices to be offered in the catalog or marketplace.

(b) Requirements for cost or pricing data. If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15–2 of FAR 15.408.

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

(End of clause)

Alternate I (OCT 1997). As prescribed in 15.408(m), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause:

(1) The Contractor shall submit cost or pricing data and supporting attachments prepared in the following format:

Alternate II (OCT 1997). As prescribed in 15.408(m), add the following paragraph (c) to the basic clause:

(c) When the proposal is submitted, also submit one copy each to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (OCT 1997). As prescribed in 15.408(m), add the following paragraph (c) to the basic clause (if Alternate II is also used, redesignate the following paragraph as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: [Insert media format]

Alternate IV (OCT 1997). As prescribed in 15.408(m), replace the text of the basic clause with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below:

[Insert description of the information and the format that are required, including access to the Contracting Officer insert specific type of contract] contract resulting from this solicitation.

(End of provision)


52.216-1 Type of Contract.

As prescribed in 16.105, complete and insert the following provision:

TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a (Con)tract resulting from this solicitation.

(End of provision)


As prescribed in 16.203-4(a), insert the following clause. The clause may be modified by increasing the 10 percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.

ECOnomic Price AdjustmenT—Standard Supplies (JAN 1997)

(a) The Contractor warrants that the unit price stated in the Schedule for [offeror insert Schedule line item number] is not in excess of the Contractor’s applicable established price in effect on the contract date for like quantities of the same item. The term unit price excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term established price means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, and (2) is the net price...
52.216-3 Economic Price Adjustment—Semistandard Supplies.

As prescribed in 16.203-4(b), insert the following clause. The clause may be modified by increasing the 10 percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.

**ECONOMIC PRICE ADJUSTMENT—SEMISTANDARD SUPPLIES (JAN 1997)**

(a) The Contractor warrants that the supplies identified as line items [offeror insert Schedule line item number] in the Schedule are, except for modifications required by the contract specifications, supplies for which it has an established price. The term established price means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, and (2) is the net price after applying any standard trade discounts offered by the Contractor. The Contractor further warrants that, as of the date of this contract, any difference between the unit prices stated in the contract for these line items and the Contractor's established prices for like quantities of the nearest commercial equivalents are due to compliance with contract specifications and with any contract requirements for preservation, packaging, and packing beyond standard commercial practice.

(b) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

1. The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price.
2. The increased contract unit price shall be effective (i) on the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter or (ii) if the written request is received later, on the date the Contracting Officer receives the request.
3. The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.
4. No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.
5. Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

During the time allowed for the cancellation provided for in subparagraph (c)(5) above, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) above.

(End of clause)

Federal Acquisition Regulation

not exceed 10 percent of the original contract unit price.

(2) The increased contract unit price shall be effective (i) on the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter or (ii) if the written request is received later, on the date the Contracting Officer receives the request.

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(d) During the time allowed for the cancellation provided for in subparagraph (c)(5) above, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) above.

(End of clause)


52.216-4 Economic Price Adjustment—Labor and Material.

As prescribed in 16.203-4(c), when contracting by negotiation, insert a clause that is substantially the same as the following clause in solicitations and contracts when the conditions specified in 16.203-4(c)(1), through (4), apply. The clause may be modified by increasing the 10 percent limit on aggregate increases specified in subparagraph (c)(4), upon approval by the chief of the contracting office.

ECONOMIC PRICE ADJUSTMENT—LABOR AND MATERIAL (JAN 1997)

(a) The Contractor shall notify the Contracting Officer if, at any time during contract performance, the rates of pay for labor (including fringe benefits) or the unit prices for material shown in the Schedule either increase or decrease. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract. The notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) below, and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

(b) Promptly after the Contracting Officer receives the notice and data under paragraph (a) above, the Contracting Officer and the Contractor shall negotiate a price adjustment in the contract unit prices and its effective date. However, the Contracting Officer may postpone the negotiations until an accumulation of increases and decreases in the labor rates (including fringe benefits) and unit prices of material shown in the Schedule results in an adjustment allowable under subparagraph (c)(3) below. The Contracting Officer shall modify this contract to include the price adjustment and its effective date and (2) to revise the labor rates (including fringe benefits) or unit prices of material as shown in the Schedule to reflect the increases or decreases resulting from the adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Any adjustment shall be limited to the effect on unit prices of the increases or decreases in the rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule. There shall be no adjustment for (i) supplies or services for which the production cost is not affected by such changes, (ii) changes in rates or unit prices other than those shown in the Schedule, or (iii) changes in the quantities of labor or material used from those shown in the Schedule for each item.

(2) No upward adjustment shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause.

(3) There shall be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for material which would not result in a net change of at
least 3 percent of the then-current total contract price. This limitation shall not apply, however, if, after final delivery of all contract line items, either party requests an adjustment under paragraph (b) above.

(d) The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases that may be made under this clause.

(d) The Contracting Officer may examine the Contractor’s books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

(End of clause)


52.216–5 Price Redetermination—Prospective.

As prescribed in 16.205–4, insert the following clause:

**PRICE REDETERMINATION—PROSPECTIVE (OCT 1997)**

(a) General. The unit prices and the total price stated in this contract shall be periodically redetermined in accordance with this clause, except that (1) the prices for supplies delivered and services performed before the first effective date of price redetermination (see paragraph (c) below) shall remain fixed and (2) in no event shall the total amount paid under this contract exceed any ceiling price included in the contract.

(b) Definition. Costs, as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) Price redetermination periods. For the purpose of price redetermination, performance of this contract is divided into successive periods. The first period shall extend from the date of the contract to ____ [see Note (1)] and the second and each succeeding period shall extend for ____ [insert appropriate number] months from the end of the last preceding period, except that the parties may agree to vary the length of the final period. The first day of the second and each succeeding period shall be the effective date of price redetermination for that period.

(d) Data submission. (1) Not more than ____ nor less than ____ (see Note (2)) days before the end of each redetermination period, except the last, the Contractor shall submit—

(i) Proposed prices for supplies that may be delivered or services that may be performed in the next succeeding period, and—

(A) An estimate and breakdown of the costs of these supplies or services in the format of Table 15–2, FAR 15.408, or in any other form on which the parties may agree;

(B) Sufficient data to support the accuracy and reliability of this estimate; and

(C) An explanation of the differences between this estimate and the original (or last preceding) estimate for the same supplies or services; and

(ii) A statement of all costs incurred in performing this contract through the end of the current month (see Note (3)) before the submission of proposed prices in the format of Table 15–2, FAR 15.408 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations on redetermined prices are concluded—

(i) Supplemental statements of costs incurred after the date stated in subdivision (d)(1)(ii) above for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by subparagraphs (1) and (2) above, within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submitted or within all reasonable times until the end of the last period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(e) Price redetermination. Upon the Contracting Officer’s receipt of the data required by paragraph (d) above, the Contracting Officer and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies that may be delivered or services that may be performed in the period following the effective date of price redetermination.

(f) Contract modifications. Each negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by
the Contractor and the Contracting Officer, stating the redetermined prices that apply during the redetermination period.

(g) Adjusting billing prices. Pending execution of the contract modification (see paragraph (f) above), the Contractor shall submit invoices or vouchers in accordance with the billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined price will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any requested additional payments, refunds, or credits shall be made promptly.

(h) Quarterly limitation on payments statement. This paragraph (h) applies only during periods for which firm prices have not been established.

(i) Within 45 days after the end of the quarter of the Contractor’s fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (h)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) The statement required by subparagraph (1) above need not be submitted for any quarter for which either no costs are to be reported under subdivision (1)(i) above, or revised billing prices have been established in accordance with paragraph (g) above, and do not exceed the existing contract price, the Contractor’s price-redetermination proposal, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) above exceeds the sum due the Contractor, as computed in accordance with subdivisions (1)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(4) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(i) Subcontracts. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(j) Disagreements. If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (d) above are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (f), (g), and (h) above, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision shall be treated as an executed contract modification. Pending final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as provided in this clause.

(k) Termination. If this contract is terminated, prices shall continue to be established in accordance with this clause for (i) completed supplies and services accepted by the
Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(End of clause)

NOTES: (1) Express in terms of units delivered, or as a date; but in either case the period should end on the last day of a month.
(2) Insert the numbers of days chosen so that the Contractor's submission will be late enough to reflect recent cost experience (taking into account the Contractor’s accounting system), but early enough to permit review, audit (if necessary), and negotiation before the start of the prospective period.
(3) Insert first, except that second may be inserted if necessary to achieve compatibility with the Contractor’s accounting system.


52.216-6 Price Redetermination—Retroactive.

As prescribed in 16.206-4, insert the following clause:

**52.216-6 Price Redetermination—Retroactive (OCT 1997)**

(a) General. The unit price and the total price stated in this contract shall be re determined in accordance with this clause, but in no event shall the total amount paid under this contract exceed $____ (insert dollar amount of ceiling price).

(b) Definition. Costs, as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) Data submission. (1) Within [Contracting Officer insert number of days] days after delivery of all supplies to be delivered and completion of all services to be performed under this contract, the Contractor shall submit—

(i) Proposed prices;

(ii) A statement in the format of table 15–2, FAR 15.406, or in any other form on which the parties may agree, of all costs incurred in performing the contract; and

(iii) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by subparagraph (1) above within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) Price determination. Upon the Contracting Officer’s receipt of the data required by paragraph (c) above, the Contracting Officer and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies delivered and services performed by the Contractor under this contract.

(e) Contract modification. The negotiated re-determination of price shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer.

(f) Adjusting billing prices. Pending execution of the contract modification (see paragraph (e) above), the Contractor shall submit invoices or vouchers in accordance with billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined prices will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any resulting additional payments, refunds, or credits shall be made promptly.

(g) Quarterly limitation on payments statement. This paragraph (g) shall apply until final price redetermination under this contract has been completed.

(1) Within 45 days after the end of the quarter of the Contractor’s fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor), a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this
Federal Acquisition Regulation

52.216-7

paragraph (g) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) above exceeds the sum due the Contractor, as computed in accordance with subdivisions (i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the contractor under 26 U.S.C. 1401 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reduction in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(b) Subcontracts. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(1) Disagreements. If the Contractor and the Contracting Officer fail to agree upon redetermined prices within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (c) above are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (e), (f), and (g) above and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision shall be treated as an executed contract modification.

(i) Termination. If this contract is terminated before price redetermination, prices shall be established in accordance with this clause for completed supplies and services not terminated. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(End of clause)

52.216-7 Allowable Cost and Payment.

As prescribed in 16.307(a), insert the following clause:

ALLOWABLE COST AND PAYMENT (DEC 2002)

(a) Invoicing. (1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.216-19.

(3) The designated payment office will make interim payments for contract financing on the date the [Contracting Officer insert day as prescribed by agency head; if not prescribed, insert “30th”] day after the designated billing office receives a proper payment request.

In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) Reimbursing costs. (1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of the clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term costs includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—
(1) In accordance with the terms and conditions of a subcontract or invoice; and
(2) Ordinarily within 30 days of the submission of the Contractor’s payment request to the Government.

(B) Materials issued from the Contractor’s inventory and placed in the production process for use on the contract;
(C) Direct labor;
(D) Direct travel;
(E) Other direct in-house costs; and
(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts;

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(ii) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—
(1) The Contractor’s practice is to make contributions to the retirement fund quarterly or more frequently; and
(2) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor’s indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor’s expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(5) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(i) The proposed rates shall be based on the Contractor’s actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor’s proposal.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(6) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may—
(A) Determine the amounts due to the Contractor under the contract; and
(B) Record this determination in a unilateral modification to the contract.

(e) Billing rates. Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—

(1) Shall be the anticipated final rates; and
(2) May be prospectively or retroactively revised by mutual agreement, at either party’s request, to prevent substantial overpayment or underpayment.

(f) Quick-closeout procedures. Quick-closeout procedures are applicable when the conditions in FAR 42.706(a) are satisfied.
Federal Acquisition Regulation

52.216–8

(g) Audit. At any time or times before final payment, the Contracting Officer may have the Contractor’s invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(h) Final payment. (1) Upon approval of a contractor’s invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor’s compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 5 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor’s indemnification of the Government against patent liability.

(End of clause)

Alternate I (FEB 1997). As prescribed in 16.307(a)(2), substitute the following paragraph (b)(1)(iii) for paragraph (b)(1)(iii) of the basic clause:

(iii) The amount of progress and other payments to the Contractor’s subcontractors that either have been paid, or that the Contractor is required to pay pursuant to the clause of this contract entitled “Prompt Payment for Construction Contracts.” Payments shall be made by cash, check, or other form of payment to the Contractor’s subcontractors under similar cost standards.


52.216–8 Fixed Fee.

As prescribed in 16.307(b), insert the following clause in solicitations and contracts when a cost-plus-fixed-fee contract (other than a facilities contract or a construction contract) is contemplated.

 Fixed Fee (MAR 1997)

(a) The Government shall pay the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made as specified in the Schedule; provided that after payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government’s interest. This reserve shall not exceed 15 percent of the total fixed fee or $100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholdings under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years’ settlements. The Contracting Officer may release up to 90 percent of the fee withholdings under this contract based on the Contractor’s past performance related to the submission and settlement of final indirect cost rate proposals.
52.216–9  Fee payable.

(a) General. The Government shall pay the Contractor for performing this contract a fee determined as provided in this contract.

(b) Target cost and target fee. The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) below.

1. Target cost, as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) below.

2. Target fee, as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) below.

(c) Withholding of payment. Normally, the Government shall pay the fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government’s interest. This reserve shall not exceed 15 percent of the total fixed fee or $100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years’ settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor’s past performance related to the submission and settlement of final indirect cost rate proposals.

(d) Equitable adjustments. When the work under this contract is increased or decreased by a modification to this contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this contract.

(e) Fee payable. (1) The fee payable under this contract shall be the target fee increased by [(Contracting Officer insert Contractor’s participation) cents for every dollar that the total allowable cost is less than the target cost or decreased by [(Contracting Officer insert Contractor’s participation) cents per dollar that the total allowable cost is greater than the target cost).]
52.216-12 Cost-Sharing Contract—No Fee.

As prescribed in 16.307(f), insert the following clause in solicitations and contracts when a cost-sharing contract is contemplated that provides no fee and is not a cost-sharing contract. This clause may be modified by substituting $10,000 in lieu of $100,000 as the maximum reserve in paragraph (b) if the Contractor is a nonprofit organization.

COST CONTRACT—NO FEE (APR 1984)

(a) The Government shall not pay the Contractor a fee for performing this contract.

(b) After payment of 80 percent of the total estimated cost shown in the Schedule, the Contractor may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government’s interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or $100,000, whichever is less.

(End of clause)

Alternate I (APR 1984). In a contract for research and development with an educational institution or a nonprofit organization, for which the contracting officer has determined that withholding of a portion of allowable costs is not required, delete paragraph (b) of the basic clause.

(End of clause)

52.216-12 Cost-Sharing Contract—No Fee.

As prescribed in 16.307(f), insert the following clause in solicitations and contracts when a cost-sharing contract is contemplated. This clause may be
modified by substituting $70,000 in lieu of $100,000 as the maximum reserve in paragraph (b) if the contract is with a nonprofit organization.

**Cost-Sharing Contract—No Fee (APR 1984)**

(a) The Government shall not pay to the Contractor a fee for performing this contract.

(b) After paying 80 percent of the Government’s share of the total estimated cost of performance shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government’s interest. This reserve shall not exceed one percent of the Government’s share of the total estimated cost shown in the Schedule or $100,000, whichever is less.

*(End of clause)*

**Alternate I (APR 1984).** In a contract for research and development with an educational institution, for which the contracting officer has determined that withholding of a portion of allowable cost is not required, delete paragraph (b) of the basic clause.

*48 FR 42478, Sept. 19, 1983, as amended at 72 FR 27389, May 15, 2007*

52.216–13–52.216–14 [Reserved]

52.216–15 Predetermined Indirect Cost Rates.

As prescribed in 16.307(c), insert the following clause:

**Predetermined Indirect Cost Rates (APR 1996)**

(a) Notwithstanding the Allowable Cost and Payment clause of this contract, the allowable indirect costs under this contract shall be obtained by applying predetermined indirect cost rates to bases agreed upon by the parties, as specified below.

(b)(1) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(2) The proposed rates shall be based on the Contractor’s actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor’s proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with FAR subpart 31.3 in effect on the date of this contract.

(d) Predetermined rate agreements in effect on the date of this contract shall be incorporated into the contract Schedule. The Contracting Officer (or cognizant Federal agency official) and Contractor shall negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. The agreement shall specify (1) the agreed-upon predetermined indirect cost rates, (2) the bases to which the rates apply, (3) the period for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The indirect cost rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The agreement is incorporated into this contract upon execution.

(e) Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the parties), the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the Contracting Officer (or cognizant Federal agency official), subject to appropriate adjustment when the final rates for that period are established.

(f) Any failure by the parties to agree on any predetermined indirect cost rates under this clause shall not be considered a dispute within the meaning of the Disputes clause. If for any fiscal year (or other period specified in the Schedule) the parties fail to agree to predetermined indirect cost rates, the allowable indirect costs shall be obtained by applying final indirect cost rates established in accordance with the Allowable Cost and Payment clause.

(g) Allowable indirect costs for the period from the beginning of performance until the end of the Contractor’s fiscal year (or other period specified in the Schedule) shall be obtained using the predetermined indirect cost rates and the bases shown in the Schedule.

*(End of clause)*


52.216–16 Incentive Price Revision—Firm Target.

As prescribed in 16.406(a), insert the following clause:
Incentive Price Revision—Firm Target (OCT 1997)

(a) General. The supplies or services identified in the Schedule as Items __ (Contracting Officer insert Schedule line item numbers) are subject to price revision in accordance with this clause: provided, that in no event shall the total final price of these items exceed the ceiling price of __dollars ($____). Any supplies or services that are to be (1) ordered separately under, or otherwise added to, this contract and (2) subject to price revision in accordance with the terms of this clause shall be identified as such in a modification to this contract.

(b) Definition. Costs, as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) Data submission. (1) Within [Contracting Officer insert number of days] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) of this clause, the Contractor shall submit in the format of Table 15-2, FAR 15.408, or in any other form on which the parties agree—

(i) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;

(ii) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

(iii) A list of all residual inventory and an estimate of its value; and

(iv) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by subparagraph (1) above within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) Price revision. Upon the Contracting Officer’s receipt of the data required by paragraph (c) above, the Contracting Officer and the Contractor shall promptly establish the total final price of the items specified in (a) above by applying to final negotiated cost an adjustment for profit or loss, as follows:

(1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, as follows:

(i) If the total final negotiated cost is equal to the total target cost, the adjustment is the total target profit.

(ii) If the total final negotiated cost is greater than the total target cost, the adjustment is the total target profit, less [(Contracting Officer insert percent) percent of the amount by which the total final negotiated cost exceeds the total target cost].

(iii) If the final negotiated cost is less than the total target cost, the adjustment is the total target profit plus [(Contracting Officer insert percent) percent of the amount by which the total final negotiated cost is less than the total target cost].

(e) Contract modification. The total final price of the items specified in paragraph (a) above shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that—

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of those elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(f) Adjusting billing prices. (1) Pending execution of the contract modification (see paragraph (e) above), the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices shown in this contract.

(2) If at any time it appears from information provided by the contractor under subparagraph (g)(2) below that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor’s submission of factual data showing that final cost under this contract will be substantially greater than the target cost.

(3) Any billing price adjustment shall be reflected in a contract modification and shall not affect the determination of the total final price under paragraph (d) above. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

109
(g) Quarterly limitation on payments statement. This paragraph (g) shall apply until final price revision under this contract has been completed.

(1) Within 45 days after the end of each quarter of the Contractor’s fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing —

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total target profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (i)(iv) above exceeds the sum due the Contractor as computed in accordance with subdivisions (i)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(h) Subcontracts. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(i) Disagreements. If the Contractor and the Contracting Officer fail to agree upon the total final price within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required by paragraph (c) above are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(j) Termination. If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(k) Equitable adjustment under other clauses. If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.

(l) Exclusion from target price and total final price. If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.

(m) Separate reimbursement. If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(n) Taxes. As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term contract price includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of
changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor’s profit or loss on this contract.

(End of clause)

Alternate I (APR 1984). As prescribed in 16.406(a), add the following paragraph (o) to the basic clause:

(o) Provisioning and options. Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as target prices. Target cost and profit covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.


52.216-17 Incentive Price Revision—Successive Targets.

As prescribed in 16.406(b), insert the following clause:

INCENTIVE PRICE REVISION—SUCCESSIVE TARGETS (OCT 1997)

(a) General. The supplies or services identified in the Schedule as Items [Contracting Officer insert line item numbers] are subject to price revision in accordance with this clause; provided, that in no event shall the total final price of these items exceed the ceiling price of $ dollars ($ ). The prices of these items shown in the Schedule are the initial target prices, which include an initial target profit of [Contracting Officer insert percent] percent of the initial target cost. Any supplies or services that are to be (1) ordered separately under, or otherwise added to, this contract and (2) subject to price revision in accordance with this clause shall be identified as such in a modification to this contract.

(b) Definition. Costs, as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) Submitting data for establishing the firm fixed price or a final profit adjustment formula. Upon the Contracting Officer’s receipt of the data required by paragraph (c) above the Contracting Officer and the Contractor shall promptly establish either a firm fixed price or a profit adjustment formula for determining final profit, as follows:

(i) A proposed firm fixed price or total firm target price for supplies delivered and to be delivered and services performed and to be performed.

(ii) A detailed statement of all costs incurred in the performance of this contract through the end of the month specified above, in the format of Table 15–2, FAR 15.408 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(iii) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance, in the format of Table 15–2, FAR 15.408 (or in any other form on which the parties may agree), together with—

(A) Sufficient data to support the accuracy and reliability of the estimate; and

(B) An explanation of the differences between this estimate and the original estimate used to establish the initial target prices.

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations establishing the total firm price are concluded—

(i) Supplemental statements of costs incurred after the end of the month specified in subparagraph (1) above for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by subparagraphs (1) and (2) above within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) Establishing firm fixed price or final profit adjustment formula. Upon the Contracting Officer’s receipt of the data required by paragraph (c) above the Contracting Officer and the Contractor shall promptly establish either a firm fixed price or a profit adjustment formula for determining final profit, as follows:
(1) The parties shall negotiate a total firm target cost, based upon the data submitted under paragraph (c) above.

(2) If the total firm target cost is more than the total initial target cost, the total initial target profit shall be decreased. If the total firm target cost is less than the total initial target cost, the total initial target profit shall be increased. The initial target profit shall be increased or decreased by _ percent [see Note 2] of the difference between the total initial target cost and the total firm target cost. The resulting amount shall be the total firm target profit; provided, that in no event shall the total firm target profit be less than _ percent or more than _ percent [Contracting Officer insert percents] of the total initial target cost.

(3) If the total firm target cost plus the total firm target profit represent a reasonable price for performing that part of the contract subject to price revision under this clause, the parties may agree on a firm fixed price, which shall be evidenced by a contract modification signed by the Contractor and the Contracting Officer.

(4) Failure of the parties to agree to a firm fixed price shall constitute a dispute under the Disputes clause. If agreement is not reached, or if establishment of a firm fixed price is inappropriate, the Contractor and the Contracting Officer shall establish a profit adjustment formula under which the total firm target cost shall be expressed by applying to the total final negotiated cost an adjustment for profit or loss, determined as agreed upon under subparagraph (e) above, establish the total final price, as follows:

(1) On the basis of the information required by paragraph (e) above, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price shall be established by applying to the total final negotiated cost an adjustment for final profit or loss determined as agreed upon under subparagraph (d)(4) above.

(g) Contract modification. The total final price of the items specified in paragraph (a) above shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that—

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of these elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(h) Adjustment of billing prices. (1) Pending execution of the contract modification (see paragraph (e) above), the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the initial target prices shown in this contract until firm target prices are established under paragraph (d) above. When established, the firm target prices shall be used as the billing prices.

(2) If at any time it appears from information provided by the contractor under subparagraph (i)(1) below that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall negotiate a reduction in the billing
prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of actual data showing that the final cost under this contract will be substantially greater than the target cost.

(3) Any adjustment of billing prices shall be reflected in a contract modification and shall not affect the determination of any price under paragraph (d) or (f) above. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

(i) Quarterly limitation on payments statement. This paragraph (i) shall apply until a firm fixed price or a total final price is established under subparagraph (d)(3) or (f)(2).

(ii) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total cost (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (i)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iv) The total cost of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established, increased or decreased in accordance with subparagraph (d)(4) above when the amount stated under subdivision (ii), immediately above, differs from the aggregate firm target costs of the supplies or services; and

The Contractor shall provide complete details to support any claimed reductions in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(j) Subcontracts. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(k) Disagreements. If the Contractor and the Contracting Officer fail to agree upon (1) a total firm target cost and a final profit adjustment formula or (2) a total final price, within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required in paragraphs (c) and (e) above are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(1) Termination. If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies or services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(m) Equitable adjustments under other clauses. If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.

(ii) Exclusion from target price and total final price. If any clause of this contract provides
that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.

(o) Separate reimbursement. If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(p) Taxes. As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term contract price includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor’s profit or loss on this contract.

(End of clause)

NOTES: (1) The degree of completion may be based on a percentage of contract performance or any other reasonable basis.

(2) The language may be changed to describe a negotiated adjustment pattern under which the extent of adjustment is not the same for all levels of cost variation.

Alternate I (APR 1984). As prescribed in 16.406(b), add the following paragraph (q) to the basic clause:

(q) Provisioning and options. Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as initial target prices, or target prices as agreed upon and stipulated in the pricing document supporting the provisioning or added items. Initial or firm target costs and profits and final prices covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.


52.216–18 Ordering.

As prescribed in 16.506(a), insert the following clause:

Ordering (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from through [insert dates].

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered “issued” when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

[60 FR 49727, Sept. 26, 1995]

52.216–19 Order Limitations.

As prescribed in 16.506(b), insert a clause substantially the same as follows:

Order Limitations (OCT 1995)

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than [insert dollar figure or quantity], the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor—

(1) Any order for a single item in excess of [insert dollar figure or quantity];

(2) Any order for a combination of items in excess of [insert dollar figure or quantity]; or

(3) A series of orders from the same ordering office within days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216–21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) above.

(d) Notwithstanding paragraphs (b) and (c) above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within days
after issuance, with written notice stating the Contractor’s intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

52.216-20 Definite Quantity.

As prescribed in 16.506(c), insert the following clause:

DEFINITE QUANTITY (OCT 1995)

(a) This is a definite-quantity, indefinite-delivery contract for the supplies or services specified, and effective for the period stated, in the Schedule.

(b) The Government shall order the quantity of supplies or services specified in the Schedule, and the Contractor shall furnish them when ordered. Delivery or performance shall be at locations designated in orders issued in accordance with the Ordering clause and the Schedule.

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor’s and Government’s rights and obligations with respect to that order to the same extent as if the order were completed during the contract’s effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after ______.[insert date].

(End of clause)

52.216-21 Requirements.

As prescribed in 16.506(d), insert the following clause:

REQUIREMENTS (OCT 1995)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government’s requirements do not result in orders in the quantities described as estimated or maximum in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor’s and Government’s rights and obligations with respect to that order to the same extent as if the order were completed during the contract’s effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after ______.[insert date].

(End of clause)

Alternate I (APR 1984). If the requirements contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity’s internal capability to produce or perform, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The estimated quantities are not the total requirements of the Government activity specified in the Schedule, but are estimates of requirements in excess of the quantities that the activity may itself furnish within its own capabilities. Except as this contract otherwise provides, the Government shall order from the Contractor all of that
activity’s requirements for supplies and services specified in the Schedule that exceed the quantities that the activity may itself furnish within its own capabilities.

Alternate II (APR 1984). If the requirements contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, add the following paragraph (g) to the basic clause:

(g) The requirements referred to in this contract are for items to be manufactured according to Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.

Alternate III (OCT 1995). If the requirements contract involves a partial small business set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The Government’s requirements for each item or subitem of supplies or services described in the Schedule are for items to be manufactured according to Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.

Alternate IV (OCT 1995). If the contract includes subsistence for both Government use and resale in the same Schedule and similar products may be acquired on a brand-name basis and the contract also involves a partial small business set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause and add the following paragraph (g) to the basic clause:

(c) The Government’s requirements for each item or subitem of supplies or services described in the Schedule are for items to be manufactured according to Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.

Alternate IV (OCT 1995). If the contract includes subsistence for both Government use and resale in the same Schedule and similar products may be acquired on a brand-name basis and the contract also involves a partial small business set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause and add the following paragraph (g) to the basic clause:

(g) The requirements referred to in this contract are for items to be manufactured according to Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.


52.216–22 Indefinite Quantity.

As prescribed in 16.506(e), insert the following clause:

INDEFINITE QUANTITY (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the maximum. The Government shall order at least the quantity of supplies or services designated in the Schedule as the minimum.

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor’s and Government’s rights and obligations with respect to that order to the same extent as if the order were completed during the contract’s effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after ___ [insert date].
Federal Acquisition Regulation

52.216-23 Execution and Commencement of Work.

As prescribed in 16.603-4(b)(1), insert the following clause in solicitations and contracts when a letter contract is contemplated, except that it may be omitted from letter contracts awarded on SF 26:

EXECUTION AND COMMENCEMENT OF WORK (APR 1984)

The Contractor shall indicate acceptance of this letter contract by signing three copies of the contract and returning them to the Contracting Officer not later than [insert date]. Upon acceptance by both parties, the Contractor shall proceed with performance of the work, including purchase of necessary materials.

(End of clause)

52.216-24 Limitation of Government Liability.

As prescribed in 16.603-4(b)(2), insert the following clause in solicitations and contracts when a letter contract is contemplated:

LIMITATION OF GOVERNMENT LIABILITY (APR 1984)

(a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding ___ dollars.

(b) The maximum amount for which the Government shall be liable if this contract is terminated is ___ dollars.

(End of clause)

52.216-25 Contract Definitization.

As prescribed in 16.603-4(b)(3), insert the following clause:

CONTRACT DEFINITIZATION (OCT 1997)

(a) A ___ [insert specific type of contract] definitive contract is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of execution of the definitive contract, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a ___ [insert specific type of proposal (e.g., fixed-price or cost-and-fee)] proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract is [insert target date for definitization of the contract and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of make-or-buy and subcontracting plans and cost or pricing data]:

(End of clause)

52.216-25 Alternate I (APR 1984). In letter contracts awarded on the basis of price competition, add the following paragraph (d) to the basic clause:

(d) The definitive contract resulting from this letter contract will include a negotiated ___ [insert price ceiling or firm fixed price] in no event to exceed ___ [insert the proposed price upon which the award was based].

52.216–26 Payments of Allowable Costs Before Definitization.

As prescribed in 16.603–4(c), insert the following clause:

PAYMENTS OF ALLOWABLE COSTS BEFORE DEFINITIZATION (DEC 2002)

(a) Reimbursement rate. Pending the placing of the definitive contract referred to in this letter contract, the Government will promptly reimburse the Contractor for all allowable costs under this contract at the following rates:

(1) One hundred percent of approved costs representing financing payments to subcontractors under fixed-price subcontracts, provided that the Government’s payments to the Contractor will not exceed 80 percent of the allowable costs of those subcontractors.

(2) One hundred percent of approved costs representing cost-reimbursement subcontracts; provided, that the Government’s payments to the Contractor shall not exceed 85 percent of the allowable costs of those subcontractors.

(3) Eighty-five percent of all other approved costs.

(b) Limitation of reimbursement. To determine the amounts payable to the Contractor under this letter contract, the Contracting Officer shall determine allowable costs in accordance with the applicable cost principles in part 31 of the Federal Acquisition Regulation (FAR). The total reimbursement made under this paragraph shall not exceed 85 percent of the maximum amount of the Government’s liability, as stated in this contract.

(c) Invoicing. Payments shall be made promptly to the Contractor when requested as work progresses, but (except for small business concerns) not more often than every 2 weeks, in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer invoices or vouchers supported by a statement of the claimed allowable cost incurred by the Contractor in the performance of this contract.

(d) Allowable costs. For the purpose of determining allowable costs, the term costs includes—

(1) Those recorded costs that result at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(2) When the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(i) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Contractor’s payment request to the Government;

(ii) Materials issued from the Contractor’s stores inventory and placed in the production process for use on the contract;

(iii) Direct labor;

(iv) Direct travel;

(v) Other direct in-house costs; and

(vi) Properly allocable and allowable indirect costs as shown on the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(3) The amount of financing payments that the Contractor has paid by cash, check, or other forms of payment to subcontractors.

(e) Small business concerns. A small business concern may receive more frequent payments than every 2 weeks.

(f) Audit. At any time before final payment, the Contracting Officer may have the Contractor’s invoices or vouchers and statements of costs audited. Any payment may be (1) reduced by any amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for overpayments or underpayments made on preceding invoices or vouchers.

(End of clause)

52.216–27 Single or Multiple Awards.

As prescribed in 16.506(f), insert the following provision:

SINGLE OR MULTIPLE AWARDS (OCT 1995)

The Government may elect to award a single delivery order contract or task order contract or to award multiple delivery order contracts or task order contracts for the same or similar supplies or services to two or more sources under this solicitation.

(End of provision)

52.216–28 Multiple Awards for Advisory and Assistance Services.

As prescribed in 16.506(g), insert the following provision:

MULTIPLE AWARDS FOR ADVISORY AND ASSISTANCE SERVICES (OCT 1995)

The Government intends to award multiple contracts for the same or similar advisory and assistance services to two or more sources under this solicitation unless the
Federal Acquisition Regulation

Government determines, after evaluation of offers, that only one offeror is capable of providing the services at the level of quality required.

(End of provision)

[60 FR 49728, Sept. 26, 1995]


As prescribed in 16.601(e)(1), insert the following provision:

TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—NON-COMMERCIAL ITEM ACQUISITION WITH ADEQUATE PRICE COMPETITION (FEB 2007)

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit for each category of labor to be performed by—

(1) The offeror;

(2) Subcontractors; and/or

(3) Divisions, subsidiaries, or affiliates of the offeror under a common control;

(c) The offeror must establish fixed hourly rates using—

(1) Separate rates for each category of labor to be performed by each subcontractor and for each category of labor to be performed by the offeror, and for each category of labor to be transferred between divisions, subsidiaries, or affiliates of the offeror under a common control;

(2) Blended rates for each category of labor to be performed by the offeror, including labor transferred between divisions, subsidiaries, or affiliates of the offeror under a common control, and all subcontractors; or

(3) Any combination of separate and blended rates for each category of labor to be performed by the offeror, affiliates of the offeror under a common control, and subcontractors.

(End of provision)

[71 FR 74665, Dec. 12, 2006]


As prescribed in 16.601(e)(2), insert the following provision:

TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—COMMERCIAL ITEM ACQUISITION (FEB 2007)

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit for each category of labor to be performed by—

(1) The offeror;

(2) Each subcontractor; and

(3) Each division, subsidiary, or affiliate of the offeror under a common control.

(c) Unless exempt under paragraph (d) of this provision, the fixed hourly rates for services transferred between divisions, subsidiaries, or affiliates of the offeror under a common control—

(1) Shall not include profit for the transferring organization; but

(2) May include profit for the prime Contractor.

(d) The fixed hourly rates for services that meet the definition of commercial item at 2.101 that are transferred between divisions, subsidiaries, or affiliates of the offeror under a common control may be the established catalog or market rate when it is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the offeror or any division, subsidiary or affiliate of the offeror under a common control.

(End of provision)

[71 FR 74665, Dec. 12, 2006]


As prescribed in 16.601(e)(3), insert the following provision:

TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—COMMERCIAL ITEM ACQUISITION (FEB 2007)

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—

(1) The offeror;

(2) Subcontractors; and/or

(3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

(End of provision)
52.217–1

(End of provision)


52.217–1 [Reserved]

52.217–2 Cancellation Under Multiyear Contracts.

As prescribed in 17.109(a), insert the following clause:

CANCELLATION UNDER MULTIYEAR CONTRACTS (OCT 1997)

(a) Cancellation, as used in this clause, means that the Government is cancelling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule, unless a later date is agreed to, if the Contracting Officer (1) notifies the Contractor that funds are not available for contract performance for any subsequent program year, or (2) fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

(b) Except for cancellation under this clause or termination under the Default clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the Termination for Convenience of the Government clause.

(c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Schedule as applicable at the time of cancellation.

(d) The cancellation charge will cover only (1) costs incurred by the Contractor and/or subcontractor, (ii) reasonably necessary for performance of the contract, and (iii) that would have been equitably amortized over the entire multiyear contract period but, because of the cancellation, are not so amortized, and (2) a reasonable profit or fee on the costs.

(e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the Termination for Convenience of the Government clause of this contract. The Contractor shall submit the claim promptly but no later than 1 year from the date (1) of notification of the nonavailability of funds, or (2) specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

(f) The Contractor’s claim may include—

(1) Reasonable nonrecurring costs (see Subpart 15.4 of the Federal Acquisition Regula-

48 CFR Ch. 1 (10–1–09 Edition)
tion) which are applicable to and normally would have been amortized in all supplies or services which are multiyear requirements;

(2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;

(3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

(4) Costs not amortized solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) The claim shall not include—

(1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;

(2) Any cost already paid to the Contractor;

(3) Anticipated profit or unearned fee on the canceled work; or

(4) For service contracts, the remaining useful commercial life of facilities. Useful commercial life means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.

(h) This contract may include an Option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in option quantities any costs of a startup or nonrecurring nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those recurring costs and a reasonable profit or fee necessary to furnish the additional option quantities.

(i) Quantities added to the original contract through the Option clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

(End of clause)


52.217–3 Evaluation Exclusive of Options.

As prescribed in 17.208(a), insert a provision substantially the same as the following in solicitations when the solicitation includes an option clause and does not include one of the provisions prescribed in 17.208 (b) or (c):

(End of clause)
EVALUATION EXCLUSIVE OF OPTIONS (OCT 1984)

The Government will evaluate offers for award purposes by including only the price for the basic requirement; i.e., options will not be included in the evaluation for award purposes.

(End of provision)


As prescribed in 17.208(b), insert a provision substantially the same as the following:

EVALUATION OF OPTIONS EXERCISED AT TIME OF CONTRACT AWARD (JUN 1988)

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government’s best interests, the Government will evaluate the total price for the basic requirement together with any option(s) exercised at the time of award.

(End of provision)

52.217–5 Evaluation of Options.

As prescribed in 17.208(c), insert a provision substantially the same as the following:

EVALUATION OF OPTIONS (JUL 1990)

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government’s best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(End of provision)

52.217–6 Option for Increased Quantity.

As prescribed in 17.208(d), insert a clause substantially the same as the following:

OPTION FOR INCREASED QUANTITY (MAR 1989)

The Government may increase the quantity of supplies called for in the Schedule at the unit price specified. The Contracting Officer may exercise the option by written notice to the Contractor within [insert the period of time in which the Contracting Officer has to exercise the option]. Delivery of the added items shall continue at the same rate as the like items called for under the contract, unless the parties otherwise agree.

(End of clause)

52.217–7 Option for Increased Quantity—Separately Priced Line Item.

As prescribed in 17.208(e), insert a clause substantially the same as the following:

OPTION FOR INCREASED QUANTITY—SEPARATELY PRICED LINE ITEM (MAR 1989)

The Government may require the delivery of the numbered line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within [insert the clause the period of time in which the Contracting Officer has to exercise the option]. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

(End of clause)

52.217–8 Option To Extend Services.

As prescribed in 17.208(f), insert a clause substantially the same as the following:

OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extent of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within [insert the period of time within which the Contracting Officer may exercise the option].

(End of clause)
52.217–9 Option To Extend the Term of the Contract.

As prescribed in 17.308(g), insert a clause substantially the same as the following:

OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within ___ days [60 days unless a different number of days is inserted] before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed ___ (months) (years).

(End of clause)


52.218 [Reserved]

52.219–1 Small Business Program Representations.

As prescribed in 19.308(a)(1), insert the following provision:

SMALL BUSINESS PROGRAM REPRESENTATIONS (MAY 2004)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is—[insert NAICS code].

(2) The small business size standard is _______ (insert size standard).

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) Representations. (1) The offeror represents as part of its offer that it □ is, □ is not a small business concern.

(2) (Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents, for general statistical purposes, that it □ is, □ is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) (Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents as part of its offer that it □ is, □ is not a women-owned small business concern.

(4) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a veteran-owned small business concern.

(5) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

(6) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It [ ] is, [ ] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture.

As prescribed in 19.308(a)(1), insert a clause substantially the same as the following:

(c) Definitions. As used in this provision—

Service-disabled veteran-owned small business concern—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans; and

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(6).

Small business concern means a concern, including its affiliates, that is independently
owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (a) of this provision.

Veteran-owned small business concern means a small business concern—
(a) This provision applies to small business concerns only.
(b) The bidder’s status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

(c) Failure to identify the labor surplus areas as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of provision)

Alternate I (OCT 2002). As prescribed in 19.307(a)(2), add the following paragraph (b)(7) to the basic provision:

(7) Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision. The offeror shall check the category in which its ownership falls:
___ Black American.
___ Hispanic American.
___ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

Asian-Pacific American (persons with origins from Burma, Thailand, Malayasia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

Individual/concern, other than one of the preceding.


52.219-2 Equal Low Bids.

As prescribed in 19.306(c), insert the following provision:

EQUAL LOW BIDS (OCT 1995)

(a) This provision applies to small business concerns only.

(b) The bidder’s status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

(End of provision)

52.219–3 Notice of total HUBZone set-aside.

As prescribed in 19.1308(a), insert the following clause:

NOTICE OF TOTAL HUBZONE SET-ASIDE (JAN 1999)

(a) Definition. HUBZone small business concern, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) General. (1) Offers are solicited only from HUBZone small business concerns. Offers received from concerns that are not HUBZone small business concerns shall not be considered.

(2) Any award resulting from this solicitation will be made to a HUBZone small business concern.

(c) Agreement. A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern’s employees or the employees of other HUBZone small business concerns;

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern’s employees or the employees of other HUBZone small business concerns.

(d) A HUBZone joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (c) of this clause will be performed by the HUBZone small business participant or participants.

(e) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

[63 FR 70274, Dec. 18, 1998]

52.219–4 Notice of price evaluation preference for HUBZone small business concerns.

As prescribed in 19.1308(b), insert the following clause:

NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JUL 2005)

(a) Definition. HUBZone small business concern, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) Evaluation preference. (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference; and

(ii) Otherwise successful offers from small business concerns.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219–23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror’s base offer.

These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) Waiver of evaluation preference. A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

□ Offeror elects to waive the evaluation preference.

(d) Agreement. A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;
Federal Acquisition Regulation

52.219-7

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern’s employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern’s employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.

(f) A HUBZone small business concern non-manufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

End of clause)

52.219-6 Notice of Total Small Business Set-Aside.

As prescribed in 19.508(c), insert the following clause:

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (JUN 2003)

(a) Definition. Small business concern, as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) General. (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern or FPI.

Alternate I (OCT 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(c), delete paragraph (c).

Alternate II (MAR 2004). As prescribed in 19.508(c), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) General. (1) Offers are solicited only from small business concerns and Federal Prison Industries, Inc. (FPI). Offers received from concerns that are not small business concerns or FPI shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to either a small business concern or FPI.


52.219-7 Notice of Partial Small Business Set-Aside.

As prescribed in 19.508(d), insert the following clause:

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (JUN 2003)

(a) Definitions. Small business concern, as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) General. (1) A portion of this requirement, identified elsewhere in this solicitation, has been set aside for award to one or more small business concerns.

(2) Offers on the non-set-aside portion will be evaluated first and award will be made on that portion in accordance with the provisions of this solicitation.

(3) The set-aside portion will be awarded at the highest unit price(s) in the contract(s) for the non-set-aside portion, adjusted to reflect transportation and other costs appropriate for the selected contractor(s).

(4) The contractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. Negotiations will be conducted with the concern firm. This paragraph does not apply to construction or service contracts.

(End of clause)
that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue until a contract or contracts are awarded for the entire set-aside portion.

(c) Agreement. For the set-aside portion of the acquisition, a small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

Alternate I (OCT 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(c), delete paragraph (c).

Alternate II (MAR 2004). As prescribed in 19.508(d), add the following paragraph (d) to the basic clause:

(d) Notwithstanding paragraph (b) of this clause, offers from Federal Prison Industries, Inc., will be solicited and considered for both the set-aside and non-set-aside portion of this requirement.

52.219-8 Utilization of small business concerns.

As prescribed in 19.708(a), insert the following clause:

**Utilization of Small Business Concerns**

**(MAY 2004)**

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor’s compliance with this clause.

(c) Definitions. As used in this contract—

**HUBZone small business concern** means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

**Service-disabled veteran-owned small business concern**—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

**Small business concern** means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

**Small disadvantaged business concern** means a small business concern that represents, as part of its offer that—

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based...
Federal Acquisition Regulation 52.219-9

Small business subcontracting plan.

As prescribed in 19.708(b), insert the following clause:

**Small Business Subcontracting Plan (APR 2008)**

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause—

**Alaska Native Corporation (ANC)** means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

**Commercial item** means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

**Commercial plan** means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

**Electronic Subcontracting Reporting System (eSRS)** means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at http://www.esrs.gov.

**Indian tribe** means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

**Individual contract plan** means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

**Master plan** means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

**Subcontract** means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and...
women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror’s subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontractors that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC’s or the Indian tribe’s written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror’s total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANCs and Indian tribes);

(iii) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(iv) Total dollars planned to be subcontracted to HUBZone small business concerns;

(v) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vi) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(2)(i) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council, Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern’s size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.
Federal Acquisition Regulation

52.219-9

(6) A statement as to whether or not the offeror in included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—
   (i) Small business concerns (including ANC and Indian tribes);
   (ii) Veteran-owned small business concerns;
   (iii) Service-disabled veteran-owned small business concerns;
   (iv) HUBZone small business concerns;
   (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
   (vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror’s subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled “Utilization of Small Business Concerns” in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $550,000 ($1,000,000 for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—
   (i) Cooperate in any studies or surveys as may be required;
   (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
   (iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (i) of this clause using the Electronic Subcontracting Reporting System (eSRS) at http://www.esrs.gov. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;
   (iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;
   (v) Provide its prime contract number, its DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their reports; and
   (vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror’s efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
   (i) Source lists (e.g., CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
   (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
   (iii) Records on each subcontract solicitation resulting in an award of more than $100,000, indicating—
      (A) Whether small business concerns were solicited and, if not, why not;
      (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
      (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
      (D) Whether HUBZone small business concerns were solicited and, if not, why not;
      (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
      (F) Whether women-owned small business concerns were solicited and, if not, why not; and
      (G) If applicable, the reason award was not made to a small business concern.
   (iv) Records of any outreach efforts to contact—
      (A) Trade associations;
      (B) Business development organizations;
(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(c) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all “make-or-buy” decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—

(1) The master plan has been approved.

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer, and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government’s fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.214-6, Subcontracts for Commercial Items, under a prime contract.
Federal Acquisition Regulation

52.219-9

(k) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled “Utilization Of Small Business Concerns,” or (2) an approved plan required by this clause, shall be a material breach of the contract.

(i) The Contractor shall submit ISRs and SSRs using the web-based eSRS at http://www.easr.gov. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe.

1. ISR. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan and shall be submitted to the Administrative Contracting Officer (ACO) or Contracting Officer, if no ACO is assigned.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(ii) SSR

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency’s contracts, provided at least one of that agency’s contracts is over $550,000 (over $1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government’s fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government’s fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged businesses concerning North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the
year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

Alternate I (OCT 2001). When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

Alternate II (OCT 2001). As prescribed in 19.708(b)(1), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

[48 FR 42478, Sept. 19, 1983]

EDITORIAL NOTE: For Federal Register citations affecting §52.219-9, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

52.219-10 Incentive Subcontracting Program.

As prescribed in 19.708(c)(1), insert the following clause:

INCENTIVE SUBCONTRACTING PROGRAM (OCT 2001)

(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award certain percentages to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, respectively.

(b) If the Contractor exceeds its subcontracting goals for small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, and women-owned small business concerns in performing this contract, it will receive [Contracting Officer to insert the appropriate number between 0 and 10] percent of the dollars in excess of each goal in the plan, unless the Contracting Officer determines that the excess was not due to the Contractor’s efforts (e.g., a subcontractor cost overrun caused the actual subcontract amount to exceed that estimated in the subcontracting plan, or the award of subcontracts that had been planned but had not been disclosed in the subcontracting plan during contract negotiations). Determinations under this paragraph are unilateral decisions made solely at the discretion of the Government.

(c) If this is a cost-plus-fixed-fee contract, the sum of the fixed fee and the incentive fee earned under this contract may not exceed the limitations in 15.604-4 of the Federal Acquisition Regulation.

(End of clause)


52.219-11 Special 8(a) Contract Conditions.

As prescribed in 19.811-3(a), insert the following clause:
Federal Acquisition Regulation

52.219-14

SPECIAL 8(a) CONTRACT CONDITIONS (FEB 1990)

The Small Business Administration (SBA) agrees to the following:

(a) To furnish the supplies or services set forth in this contract according to the specifications and the terms and conditions hereof by subcontracting with an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(b) That in the event SBA does not award a subcontract for all or a part of the work hereunder, this contract may be terminated either in whole or in part without cost to either party.

(c) Except for novation agreements and advance payments, delegates to the [insert name of contracting agency] the responsibility for administering the subcontract to be awarded hereunder with complete authority to take any action on behalf of the Government under the terms and conditions of the subcontract; provided, however, that the [insert name of contracting agency] shall give advance notice to the SBA before it issues a final notice terminating the right of a subcontractor to proceed with further performance, either in whole or in part, under the subcontract for default or for the convenience of the Government.

(d) That payments to be made under any subcontract awarded under this contract will be made directly to the subcontractor by the [insert name of contracting agency].

(e) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the Contracting Officer cognizable under the Disputes clause of said subcontract.

(f) To notify the [insert name of contracting agency] Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(End of clause)

52.219-12 Special 8(a) Subcontract Conditions.

As prescribed in 19.811–3(b), insert the following clause:

SPECIAL 8(a) SUBCONTRACT CONDITIONS (FEB 1990)

(a) The Small Business Administration (SBA) has entered into Contract No. [insert number of contract] with the [insert name of contracting agency] to furnish the supplies or services as described therein. A copy of the contract is attached hereto and made a part hereof.

(b) The [insert name of subcontractor], hereafter referred to as the subcontractor, agrees and acknowledges as follows:

(1) That it will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. [insert number of contract] for the consideration stated therein and that it has read and is familiar with each and every part of the contract.

(2) That the SBA has delegated responsibility, except for novation agreements and advance payments, for the administration of this subcontract to the [insert name of contracting agency] with complete authority to take any action on behalf of the Government under the terms and conditions of this contract.

(3) That it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the designated Contracting Officer of the [insert name of contracting agency].

(4) That it will notify the [insert name of contracting agency] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(c) Payments, including any progress payments under this subcontract, will be made directly to the subcontractor by the [insert name of contracting agency].

(End of clause)

52.219-13 [Reserved]

52.219-14 Limitations on Subcontracting.

As prescribed in 19.508(e) or 19.811–3(e), insert the following clause:

LIMITATIONS ON SUBCONTRACTING (DEC 1996)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for—

(1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) Supplies (other than procurement from a nonmanufacturer of such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
(3) General construction. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of clause)


52.219–15 [Reserved]

52.219–16 Liquidated Damages—Subcontracting Plan.

As prescribed in 19.708(b)(2), insert the following clause:

LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (JAN 1999)

(a) Failure to make a good faith effort to comply with the subcontracting plan, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the subcontracting plan entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall issue a final notice terminating the right of the subcontractor to proceed with further performance, either in whole or in part, under the contract.

(3) That payments to be made under the contract will be made directly to the subcontractor by the contracting activity.

(4) To notify the [insert name of contracting agency] Contracting Officer immediately upon notification by the subcontractor that

valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)


52.219–17 Section 8(a) Award.

As prescribed in 19.811–3(c), insert the following clause:

SECTION 8(A) AWARD (DEC 1996)

(a) By execution of a contract, the Small Business Administration (SBA) agrees to the following:

1. To furnish the supplies or services set forth in the contract according to the specifications and the terms and conditions by subcontracting with the Offeror who has been determined an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

2. Except for novation agreements and advance payments, delegates to the [insert name of contracting activity] the responsibility for administering the contract with complete authority to take any action on behalf of the Government under the terms and conditions of the contract; provided, however that the contracting agency shall give advance notice to the SBA before it issues a final notice terminating the right of the subcontractor to proceed with further performance, either in whole or in part, under the contract.

3. That payments to be made under the contract will be made directly to the subcontractor by the contracting activity.

4. To notify the [insert name of contracting agency] Contracting Officer immediately upon notification by the subcontractor that
the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

5. That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the cognizant Contracting Officer under the “Disputes” clause of the subcontract.

(c) The offeror/subcontractor agrees and acknowledges that it will, for and on behalf of the SBA, fulfill and perform all of the requirements of the contract.

(d) The offeror/subcontractor agrees that it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the cognizant Contracting Officer of the [insert name of contracting agency].

(End of clause)

52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.

As prescribed in 19.811-3(d), insert the following clause:

**NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS (JUN 2003)**

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA’s 8(a) Program and which meet the following criteria at the time of submission of offer—

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) Agreement. A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(2) The [insert name of SBA’s contractor] will notify the [insert name of contracting agency] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

**Alternate I (APR 2005).** If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, add the following paragraph (a)(3) to paragraph (a) of the clause:

(3) The offeror’s approved business plan is on the file and serviced by * *(Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA).*

**Alternate II (DEC 1996).** When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(c), delete subparagraph (d)(1).

52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.

As prescribed in 19.1008(a), insert the following provision:

**SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (OCT 2000)**

(a) **Definition.** Emerging small business as used in this solicitation, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the North American Industry Classification System (NAICS) code assigned to a contracting opportunity.

(b) [Complete only if the Offeror has represented itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.]
52.219–20 Notice of Emerging Small Business Set-Aside.

As prescribed in 19.1008(b), insert the following provision:

**NOTICE OF EMERGING SMALL BUSINESS SET-ASIDE (JAN 1991)**

Offers or quotations under this acquisition are solicited from emerging small business concerns only. Offers that are not from an emerging small business shall not be considered and shall be rejected.

(End of provision)


52.219–21 Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program.

As prescribed in 19.1008(c), insert the following provision:

**SMALL BUSINESS SIZE REPRESENTATION FOR TARGETED INDUSTRY CATEGORIES UNDER THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (MAY 1999)**

(Complete only if the Offeror has represented itself under the provision at 52.219–1 as a small business concern under the size standards of this solicitation.)

52.219–22 Small Disadvantaged Business Status.

As prescribed in 19.308(b), insert the following provision:

**SMALL DISADVANTAGED BUSINESS STATUS (OCT 1999)**

(a) General. This provision is used to assess an offeror’s small disadvantaged business status for the purpose of obtaining a benefit on this solicitation. Status as a small business and status as a small disadvantaged business for general statistical purposes is covered by the provision at FAR 52.219–1, Small Business Program Representation.

(b) Representations.

(1) General. The offeror represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either—

A (i) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 121, Subpart B; and
A (A) No material change in disadvantaged ownership and control has occurred since its certification;
A (B) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
A (C) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net); or
A (ii) It has submitted a completed application to the Small Business Administration
Federal Acquisition Regulation

or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(2) For Joint Ventures. The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements at 13 CFR 124.1002(f) and that the representation in paragraph (b)(1) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture:____.]

(c) Penalties and Remedies. Anywho misrepresents any aspects of the disadvantaged status of a concern for the purposes of securing a contract or subcontract shall:

(1) Be punished by imposition of a fine, imprisonment, or both;

(2) Be subject to administrative remedies, including suspension and debarment; and

(3) Be ineligible for participation in programs conducted under the authority of the Small Business Act.

(End of provision)

Alternate I (OCT 1998). As prescribed in 19.307(b), add the following paragraph (b)(3) to the basic provision:

(3) Address. The offeror represents that its address is, is not in a region for which a small disadvantaged business procurement mechanism is authorized and its address has not changed since its certification as a small disadvantaged business concern or submission of its application for certification. The list of authorized small disadvantaged business procurement mechanisms and regions is posted at http://www.arnet.gov/References/sdbadjustments.htm. The offeror shall use the list in effect on the date of this solicitation. “Address,” as used in this provision, means the address of the offeror as listed on the Small Business Administrations register of small disadvantaged business concerns or the address on the completed application that the concern has submitted to the Small Business Administration or a Private Certifier in accordance with 13 CFR 124, subpart B. For joint ventures, “address” refers to the address of the small disadvantaged business concern that is participating in the joint venture.


52.219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

As prescribed in 19.1104, insert the following clause:

**NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (OCT 2008)**

(a) Definitions. As used in this clause—

Small disadvantaged business concern means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either—

(1) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, subpart B; and

(2) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted. In this case, in order to receive the benefit of a price evaluation adjustment, an offeror must receive certification as a small disadvantaged business concern by the Small Business Administration prior to contract award; or

(3) It is a joint venture as defined in 13 CFR 124.1002(f).

Historically black college or university means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense (DoD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institution means an institution of higher education meeting the requirements of Section 365(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k), including a Hispanic-serving institution of higher education, as defined in Section 502(a) of the Act (20 U.S.C. 1170a).
52.219–24

48 CFR Ch. 1 (10–1–09 Edition)

(b) Evaluation adjustment. (1) The Contracting Officer will evaluate offers by adding a factor of [(Contracting Officer insert the percentage)] percent to the prices of all offers, except—

(i) Offers from small disadvantaged business concerns that have not waived the adjustment;

(ii) An otherwise successful offer from a historically black college or university or minority institution.

(2) The Contracting Officer will apply the factor to a line item or a group of line items on which award may be made. The Contracting Officer will apply other evaluation factors described in the solicitation before application of the factor. The factor may not be applied if using the adjustment would cause the contract award to be made at a price that exceeds the fair market price by more than the factor in paragraph (b)(1) of this clause.

(c) Waiver of evaluation adjustment. A small disadvantaged business concern may elect to waive the adjustment, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply to offers that waive the adjustment.

Offeror elects to waive the adjustment.

(1) Agreements. (i) A small disadvantaged business concern, that did not waive the adjustment, agrees that in performance of the contract, in the case of a contract for—

(A) Services, except construction, at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern;

(B) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern;

(C) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern; or

(D) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(ii) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

(2) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

Alternate I (JUN 2003). As prescribed in 19.1104, substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(2) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

Alternate II (OCT 1998). As prescribed in 19.1104, substitute the following paragraph (b)(1)(i) for paragraph (b)(1)(i) of the basic clause:

(i) Offers from small disadvantaged business concerns, that have not waived the adjustment, whose address is in a region for which an evaluation adjustment is authorized;


52.219–24 Small Disadvantaged Business Participation Program—Targets.

As prescribed in 19.1204(a), insert a provision substantially the same as the following:

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—TARGETS (OCT 2000)

(a) This solicitation contains a source selection factor or subfactor related to the participation of small disadvantaged business (SDB) concerns in the contract. Credit under that evaluation factor or subfactor is not available to an SDB concern that qualifies for a price evaluation adjustment under the clause at FAR 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, unless the SDB concern specifically waives the price evaluation adjustment.

(b) In order to receive credit under the source selection factor or subfactor, the offeror must provide, with its offer, targets, expressed as dollars and percentages of total contract value, for SDB participation in any of the North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce. The targets may provide for participation by a prime contractor, joint venture partner, teaming arrangement member, or subcontractor; however, the targets for subcontractors must be listed separately.

(End of provision)

[63 FR 36125, July 1, 1998, as amended at 65 FR 46658, July 26, 2000]
Federal Acquisition Regulation

52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.

As prescribed in 19.1204(b), insert the following clause:

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—DISADVANTAGED STATUS AND REPORTING (APR 2008)

(a) Disadvantaged status for joint venture partners, team members, and subcontractors. This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219-22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern is a small disadvantaged business concern certified by the Small Business Administration by using the Central Contractor Registration database or by contacting the SBA’s Office of Small Disadvantaged Business Certification and Eligibility.

(b) Reporting requirement. If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion or as otherwise provided in this contract. Reporting may be on Optional Form 312, Small Disadvantaged Business Participation Report, in the Contractor’s own format providing the same information, or accomplished through using the Electronic Subcontracting Reporting System’s Small Disadvantaged Business Participation Report. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small Business Subcontracting Plan, reports shall be submitted with the final Individual Subcontract Report at the completion of the contract.

(End of clause)


52.219-26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.

As prescribed in 19.1204(c), insert a clause substantially the same as the following:

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—INCENTIVE SUBCONTRACTING (OCT 2000)

(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its offer to try to award a certain amount to small disadvantaged business concerns in the North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce.

(b) If the Contractor exceeds its total monetary target for subcontracting to small disadvantaged business concerns in the authorized NAICS Industry Subsectors, it will receive [(Contracting Officer to insert the appropriate number between 0 and 10) percent of the dollars in excess of the monetary target, unless the Contracting Officer determines that the excess was not due to the Contractor’s efforts (e.g., a subcontractor cost overrun caused the actual subcontract amount to exceed that estimated in the offer, or the excess was caused by the award of subcontracts that had been planned but had not been disclosed in the offer during contract negotiations). Determinations under this paragraph are unilateral decisions made solely at the discretion of the Government.

(c) If this is a cost-plus-fixed-fee contract, the sum of the fixed fee and the incentive fee earned under this contract may not exceed the limitations in subsection 15.404-4 of the Federal Acquisition Regulation.

(End of clause)


52.219-27 Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.

As prescribed in 19.1407, insert the following clause:

NOTICE OF TOTAL SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET-ASIDE (MAY 2004)

(a) Definition. Service-disabled veteran-owned small business concern—

(i) Means a small business concern—

(A) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(B) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

(b) General. (1) Offers are solicited only from service-disabled veteran-owned small business concerns. Offers received from concerns that are not service-disabled veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation will be made to a service-disabled veteran-owned small business concern.

(c) Agreement. A service-disabled veteran-owned small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other service-disabled veteran-owned small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other service-disabled veteran-owned small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern’s employees or the employees of other service-disabled veteran-owned small business concerns;

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern’s employees or the employees of other service-disabled veteran-owned small business concerns.

(d) A joint venture may be considered a service-disabled veteran owned small business concern if—

(1) At least one member of the joint venture is a service-disabled veteran-owned small business concern, and makes the following representations: That it is a service-disabled veteran-owned small business concern, and that it is a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause. Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in the kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (c) of this clause. Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in the kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(3) For long-term contracts—

(i) Within 90 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the end of the fifth year of any renewal or extension of the contract;
(i) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter;

(c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at http://www.sba.gov/services/contractingopportunities/sizestandardstoscps/.

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the rerepresentation required by paragraph (b) of this clause by validating or updating all its representations in the Online Representations and Certifications Application and its data in the Central Contractor Registration, as necessary, to ensure that they reflect the Contractor’s current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in ORCA, or does not have a representation in ORCA for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it is, is not a small business concern under NAICS Code assigned to contract number [Contractor to sign and date and insert authorized signer’s name and title].

(End of clause)


52.221 [Reserved]

52.222-1 Notice to the Government of Labor Disputes.

As prescribed in 22.103–5(a), insert the following clause:

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(End of clause)


52.222-2 Payment for Overtime Premiums.

As prescribed in 22.103–5(b), insert the following clause:

PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)

(a) The use of overtime is authorized under this contract if the overtime premium cost does not exceed * or the overtime premium is paid for work—

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall—

(1) Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and

*Insert either “zero” or the dollar amount agreed to during negotiations.
52.222–3 Convict Labor.

As prescribed in 22.202, insert the following clause:

**Convict Labor (JUN 2003)**

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12908 and 12943.

(End of clause)

[58 FR 28085, May 22, 2003]

52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation.

As prescribed in 22.305, insert the following clause:

**Contract Work Hours and Safety Standards Act—Overtime Compensation (JUL 2005)**

(a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of $10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) Payrolls and basic records. (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this
clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) Subcontracts. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

[65 FR 46667, July 26, 2000, as amended at 70 FR 33667, June 8, 2005]

52.222-5 Davis-Bacon Act—Secondary Site of the Work.

As prescribed in 22.407(a), insert the following provision:

DAVIS-BACON ACT—SECONDARY SITE OF THE WORK (JUL 2005)

(a)(1) The offeror shall notify the Government if the offeror intends to perform work at any secondary site of the work, as defined in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Davis-Bacon Act, of this solicitation.

(2) If the offeror is unsure if a planned work site satisfies the criteria for a secondary site of the work, the offeror shall request a determination from the Contracting Officer.

(b)(1) If the wage determination provided by the Government for work at the primary site of the work is not applicable to the secondary site of the work, the offeror shall request a wage determination from the Contracting Officer.

(2) The due date for receipt of offers will not be extended as a result of an offeror’s request for a wage determination for a secondary site of the work.

(End of provision)

[70 FR 33667, June 8, 2005]

52.222-6 Davis-Bacon Act.

As prescribed in 22.407(a), insert the following clause:

DAVIS-BACON ACT (JUL 2005)

(a) Definition—Site of the work—(1) Means—

(i) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (a)(1)(ii), whenever the word "site of the work" is used in this clause, it means:

(B) Established specifically for the performance of the contract or project; and

(i) They are dedicated exclusively, or nearly so, to performance of a contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work," even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work...
shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer’s payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates) established under paragraph (c) of this clause) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

(c)(1) The Contracting Officer shall require that any class of laborers or mechanics, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(iv) With respect to helpers, such a classification prevails in the area in which the work is performed.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for Determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)
Federal Acquisition Regulation

52.222–7 Withholding of Funds.

As prescribed in 22.407(a), insert the following clause:

WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor for the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

[53 FR 4945, Feb. 18, 1988]

52.222–8 Payrolls and Basic Records.

As prescribed in 22.407(a), insert the following clause:

PAYMENT FOR OVERTIME PREMIUMS (FEB 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH–347 (Federal Stock Number 029–005–00014–1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a Statement of Compliance, signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the Statement of Compliance required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal
prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of clause)

[53 FR 4945, Feb. 18, 1988]

52.222-9 Apprentices and Trainees.

As prescribed in 22.407(a), insert the following clause:

APPRENTICES AND TRAINES (JUL 2005)

(a) Apprentices. (1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman’s hourly rate) specified in the Contractor’s or subcontractor’s registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice’s level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprenticeship program, the ratios and wage rates (expressed in percentages of the journeyman’s hourly rate) specified in the registered program shall be observed. The Contractor or subcontractor shall be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees. (1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee’s level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less
Federal Acquisition Regulation

52.222-11 Subcontracts (Labor Standards).

As prescribed in 22.407(a), insert the following clause:

SUBCONTRACTS (LABOR STANDARDS) (JUL 2005)

(a) Definition. Construction, alteration or repair, as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—
(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
(2) Painting and decorating;
(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the “site of the work” as defined in the FAR clause at 52.222-6, Davis-Bacon Act of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the “site of work” definition; and
(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Davis-Bacon Act, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the “site of the work” definition).
(b) The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—
(1) Davis-Bacon Act;
(2) Contract Work Hours and Safety Standards Act—Overtime Compensation (If the clause is included in this contract);
(3) Apprentices and Trainees;
(4) Payrolls and Basic Records;
(5) Compliance with Copeland Act Requirements;
(6) Withholding of Funds;
(7) Subcontracts (Labor Standards);
(8) Contract Termination—Debarment;
(9) Disputes Concerning Labor Standards;
(10) Compliance with Davis-Bacon and Related Act Regulations; and
(11) Certification of Eligibility.
(c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).
(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor’s signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.
(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.
(e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.
52.222–12 Contract Termination—Debarment.
As prescribed in 22.407(a), insert the following clause:

**CONTRACT TERMINATION—DEBARMENT (FEB 1988)**

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance With Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

(End of clause)

52.222–13 Compliance with Davis-Bacon and Related Act Regulations.
As prescribed in 22.407(a), insert the following clause:

**COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are hereby incorporated by reference in this contract.

(End of clause)

52.222–14 Disputes Concerning Labor Standards.
As prescribed in 22.407(a), insert the following clause:

**DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)**

The United States Department of Labor has set forth in 29 CFR parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

52.222–15 Certification of Eligibility.
As prescribed in 22.407(a), insert the following clause:

**CERTIFICATION OF ELIGIBILITY (FEB 1988)**

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor’s firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of clause)

52.222–16 Approval of Wage Rates.
As prescribed in 22.407(b), insert the following clause:

**APPROVAL OF WAGE RATES (FEB 1988)**

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

(End of clause)
Federal Acquisition Regulation

52.222-17 [Reserved]

52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.

As prescribed in 22.1505(a), insert the following provision:

CERTIFICATION REGARDING KNOWLEDGE OF CHILD LABOR FOR LISTED END PRODUCTS (FEB 2001)

(a) Definition.

Forced or indentured child labor means all work or service—

1. Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

2. Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

(b) Listed end products. The following end products being acquired under this solicitation is (are) included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, identified by their country of origin. There is a reasonable basis to believe that listed end products from the listed countries of origin may have been mined, produced, or manufactured by forced or indentured child labor.

<table>
<thead>
<tr>
<th>Listed End Product</th>
<th>Listed Countries of Origin</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(c) Certification. The Government will not make award to an offeror unless the offeror, by checking the appropriate block, certifies to either paragraph (c)(1) or paragraph (c)(2) of this provision.

☐ 1. The offeror will not supply any end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in a corresponding country as listed for that end product.

☐ 2. The offeror may supply an end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture such end product. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(End of provision)

[66 FR 5349, Jan. 18, 2001]

52.222-19 Child Labor—Cooperation with Authorities and Remedies.

As prescribed in 22.1505(b), insert the following clause:

CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES (AUG 2009)

(a) Applicability. This clause does not apply to the extent that the Contractor is supplying end products mined, produced, or manufactured in—

1. Canada, and the anticipated value of the acquisition is $25,000 or more;

2. Israel, and the anticipated value of the acquisition is $50,000 or more;

3. Mexico, and the anticipated value of the acquisition is $67,826 or more; or

4. Aruba, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or the United Kingdom and the anticipated value of the acquisition is $194,000 or more.

(b) Cooperation with Authorities. To enforce the laws prohibiting the manufacture or importation of products mined, produced, or manufactured by forced or indentured child labor, authorized officials may need to conduct investigations to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under this contract. If the solicitation includes the provision 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, or the equivalent at 52.212-3(i), the Contractor agrees to cooperate fully with authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice by providing reasonable access to records, documents, persons, or premises upon reasonable request by the authorized officials.

(c) Violations. The Government may impose remedies set forth in paragraph (d) for the following violations:

1. The Contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor for listed end products.

2. The Contractor has failed to cooperate, if required, in accordance with paragraph (b) of this clause, with an investigation of the use of forced or indentured child labor by an Inspector General, Attorney General, or the Secretary of the Treasury.

3. The Contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.

4. The Contractor has furnished under the contract end products or components that have been mined, produced, or manufactured...
52.222–20

wholly or in part by forced or indentured child labor. (The Government will not pursue remedies at paragraph (d)(2) or paragraph (d)(3) of this clause unless sufficient evidence indicates that the Contractor knew of the violation.)

(d) Remedies. (1) The Contracting Officer may terminate the contract.

(2) The suspending official may suspend the Contractor in accordance with procedures in FAR Subpart 9.4.

(3) The debarring official may debar the Contractor for a period not to exceed 3 years in accordance with the procedures in FAR Subpart 9.4.

(End of clause)

52.222–21 Prohibition of segregated facilities.

As prescribed in 22.810(a)(1), insert the following clause:

PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) Segregated facilities, as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

(End of clause)

52.222–22 Previous Contracts and Compliance Reports.

As prescribed in 22.810(a)(2), insert the following provision:

PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that—

(a) It has, □ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;

(b) It □ has, □ has not, filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of clause)
Federal Acquisition Regulation


As prescribed in 22.810(b), insert the following provision:

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)

(a) The offeror’s attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor’s aggregate workforce in each trade on all construction work in the covered area, are as follows:

<table>
<thead>
<tr>
<th>Goals for minority participation for each trade</th>
<th>Goals for female participation for each trade</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Contracting Officer shall insert goals]</td>
<td>[Contracting Officer shall insert goals]</td>
</tr>
</tbody>
</table>

These goals are applicable to all the Contractor’s construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor’s compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60–4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled Affirmative Action Compliance Requirements for Construction, and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor’s goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60–4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the—

(2) Name, address, and telephone number of the subcontractor;

(3) Estimated dollar amount of the subcontract;

(4) Estimated starting and completion dates of the subcontract; and

(5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the covered area is ___________. [Contracting Officer shall insert description of the geographical areas where the contract is to be performed, giving the State, county, and city].

(End of provision)

52.222–24 Preaward On-Site Equal Opportunity Compliance Evaluation.

As prescribed in 22.810(c), insert the following provision:

PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION (FEB 1999)

If a contract in the amount of $10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of $10 million or more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

(End of provision)

52.222–25 Affirmative Action Compliance.

As prescribed in 22.810(d), insert the following provision:
52.222–26 Equal Opportunity.

As prescribed in 22.810(e), insert the following clause:

EQUAL OPPORTUNITY (MAR 2007)

(a) Definition. United States, as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b)(1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b)(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor’s activities (41 CFR 60–1.5).

(c)(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60–1.5.

(c)(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) referral or selection, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers’ representative of the Contractor’s commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60–1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition,
Federal Acquisition Regulation

52.222–27

Affirmative Action Compliance Requirements for Construction

As prescribed in 22.810(f), insert the following clause:

AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)

(a) Definitions.

Covered area, as used in this clause, means the geographical area described in the solicitation for this contract.

Deputy Assistant Secretary, as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

Employer identification number, as used in this clause, means the Federal Social Security number used on the employer’s quarterly Federal tax return, U.S. Treasury Department Form 941.

Minority, as used in this clause, means—

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, South Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of $10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60–4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor’s or subcontractor’s failure to make good-faith efforts to achieve the plan’s goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor is expected to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to
refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) of this clause.

(6) Disseminate the Contractor's equal employment policy by—

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-
Federal Acquisition Regulation 52.222–27

school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor’s workforce.

(1) Exercise all tests and other selection requirements where required under 41 CFR 60–3.

(2) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(3) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor’s obligations under this contract are being carried out.

(4) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

(5) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other associations.

(6) Conduct a review, at least annually, of all supervisors’ adherence to and performance under the Contractor’s equal employment opportunity and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided the Contractor—

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor’s minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor’s, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor’s noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246 as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60–4.8.

(n) The Contractor shall designate a responsible official to—

1. Monitor all employment-related activity to ensure that the Contractor’s equal employment policy is being carried out;

2. Submit reports as may be required by the Government; and

3. Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents.
(e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(End of clause)


52.222–28 [Reserved]

52.222–29 Notification of visa denial.

As prescribed in 22.810(g), insert the following clause:

NOTIFICATION OF VISA DENIAL (JUN 2003)

It is a violation of Executive Order 11246 for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual’s race, color, religion, sex, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60–1.10). The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW., Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

(End of clause)

[68 FR 28085, May 22, 2003]

52.222–30 Davis-Bacon Act—Price Adjustment (None or Separately Specified Method).

As prescribed in 22.407(g), insert the following clause:

DAVIS-BACON ACT—PRICE ADJUSTMENT (NONE OR SEPARATELY SPECIFIED METHOD) (DEC 2001)

(a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) The Contracting Officer will make no adjustment in contract price, other than provided for elsewhere in this contract, to cover any increases or decreases in wages and benefits as a result of—

(1) Incorporation of the Department of Labor’s wage determination applicable at the exercise of the option to extend the term of the contract;

(2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or

(3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Davis-Bacon Act.

(End of clause)

[66 FR 53482, Oct. 22, 2001]

52.222–31 Davis-Bacon Act—Price Adjustment (Percentage Method).

As prescribed in 22.407(f), insert the following clause:

DAVIS-BACON ACT—PRICE ADJUSTMENT (PERCENTAGE METHOD) (DEC 2001)

(a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) The Contracting Officer will adjust the portion of the contract price or contract unit price(s) containing the labor costs subject to the Davis-Bacon Act to provide for an increase in wages and fringe benefits at the exercise of each option to extend the term of the contract in accordance with the following procedures:

(1) The Contracting Officer has determined that the portion of the contract price or contract unit price(s) containing labor costs subject to the Davis-Bacon Act is [Contracting Officer insert percentage rate] percent.

(2) The Contracting Officer will increase the portion of the contract price or contract unit price(s) containing the labor costs subject to the Davis-Bacon Act by the percentage rate published in [Contracting Officer insert publication].

(c) The Contracting Officer will make the price adjustment at the exercise of each option to extend the term of the contract. This adjustment is the only adjustment that the Contracting Officer will make to cover any increases in wages and benefits as a result of—

(1) Incorporation of the Department of Labor’s wage determination applicable at the exercise of the option to extend the term of the contract;

(2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or
(3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Davis-Bacon Act.

(End of clause)

[66 FR 53482, Oct. 22, 2001]

52.222–32 Davis-Bacon Act—Price Adjustment (Actual Method).

As prescribed in 22.407(g), insert the following clause:

DAVIS-BACON ACT—PRICE ADJUSTMENT (ACTUAL METHOD) (DEC 2001)

(a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b)(1) The Contractor states that if the prices in this contract contain an allowance for wage or benefit increases, such allowance will not be included in any request for contract price adjustment submitted under this clause.

(2) The Contractor shall provide with each request for contract price adjustment under this clause a statement that the prices in the contract do not include any allowance for any increased cost for which adjustment is being requested.

(c) The Contracting Officer will adjust the contract price or contract unit price labor rates to reflect the Contractor's actual increase or decrease in wages and fringe benefits to the extent that the increase is made to comply with, or the decrease is voluntarily made by the Contractor as a result of—

(1) Incorporation of the Department of Labor’s Davis-Bacon Act wage determination applicable at the exercise of an option to extend the term of the contract; or

(2) Incorporation of a Davis-Bacon Act wage determination otherwise applied to the contract by operation of law.

(d) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers’ compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a revised wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall notify the Contracting Officer promptly of any decrease under this clause, but nothing in this clause precludes the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records that the Contracting Officer may reasonably require. Upon agreement of the parties, the Contracting Officer will modify the contract price or contract unit price in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) Contract price adjustment computations shall be computed as follows:

(1) Computation for contract unit price per single craft hour for schedule of indefinite-quantity work. For each labor classification, the difference between the actual wage and benefit rates (combined) paid and the wage and benefit rates (combined) required by the new wage determination shall be added to the original contract unit price if the difference results in a combined increase. If the difference computed results in a combined decrease, the contract unit price shall be decreased by that amount if the Contractor provides notification as provided in paragraph (e) of this clause.

(2) Computation for contract unit price containing multiple craft hours for schedule of indefinite-quantity work. For each labor classification, the difference between the actual wage and benefit rates (combined) paid and the wage and benefit rates (combined) required by the new wage determination shall be multiplied by the actual number of hours expended for each craft involved in accomplishing the unit-priced work item. The product of this computation will then be divided by the actual number of units ordered in the preceding contract period. The total of these computations for each craft will be added to the current contract unit price to obtain the new contract unit price. The extended amount for the contract line item will be obtained by multiplying the new unit price by the estimated quantity. If actual hours are not available from the preceding contract period for computation of the adjustment for a specific contract unit of work, the Contractor, in agreement with the Contracting Officer, shall estimate the total hours per craft per contract unit of work.
EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, Veterans of the Vietnam Era, and Other Eligible Veterans

As prescribed in 22.1310(a)(1), insert the following clause:

**EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS**

As used in this clause—

- **Definitions.** As used in this clause—
  
  **All employment openings** means all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.
  
  **Executive and top management** means any employee—
  
  (1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
  
  (2) Who customarily and regularly directs the work of two or more other employees;
  
  (3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;
  
  (4) Who customarily and regularly exercises discretionary powers; and
  
  (5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

  **Other eligible veteran** means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

  **Positions that will be filled from within the Contractor's organization** means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "re-call" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

  **Qualified special disabled veteran** means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

  **Special disabled veteran** means—

  (1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—
   
   (i) Rated at 30 percent or more; or
   
   (ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (i.e., a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or
   
   (2) A person who was discharged or released from active duty because of a service-connected disability.

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**EXAMPLE: ASPHALT PAVING—CURRENT PRICE $3.38 PER SQUARE YARD**

<table>
<thead>
<tr>
<th>DBA craft</th>
<th>New WD</th>
<th>Hourly rate paid</th>
<th>Diff.</th>
<th>Actual hrs.</th>
<th>Actual units (sq. yard)</th>
<th>Increase/ sq. yard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equip. Opr.</td>
<td>$18.50</td>
<td>$18.00</td>
<td>$0.50</td>
<td>600 hrs.</td>
<td>3,000 sq. yrd.</td>
<td>$0.10</td>
</tr>
<tr>
<td>Truck Driver</td>
<td>$19.00</td>
<td>$18.25</td>
<td>$0.75</td>
<td>525 hrs.</td>
<td>3,000 sq. yrd.</td>
<td>$0.13</td>
</tr>
<tr>
<td>Laborer</td>
<td>$11.50</td>
<td>$11.25</td>
<td>$0.25</td>
<td>750 hrs.</td>
<td>3,000 sq. yrd.</td>
<td>$0.06</td>
</tr>
</tbody>
</table>

* Note: Adjustment for labor rate increases or decreases may be accompanied by social security and unemployment taxes and workers’ compensation insurance.

Current unit price (per square yard) ...... $3.38
Add DBA price adj. ................................... +.29
Total increase per square yard ............................................. * $.29

New unit price (per square yard) ........ $3.67

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(End of clause)

[66 FR 53482, Oct. 22, 2001]

52.222–35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.
Veteran of the Vietnam era means a person who—

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) General. (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans’ status in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(iii) Rate of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans’ Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212);

(c) Listing openings. (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor’s America’s Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and non-veterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) Applicability. This clause does not apply to hiring in parts of a contract, unless the work is performed in the 50 States, Washington, D.C., Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) Postings. (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall—

(i) State the rights of applicants and employees as well as the Contractor’s obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor.
(Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) Subcontracts. The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

(End of clause)

Alternate I (DEC 2001). As prescribed in 22.1310(a)(2), add the following as a preamble to the clause:

NOTICE: The following term(s) of this clause are waived for this contract: [List term(s)].


52.222-36 Affirmative Action for Workers With Disabilities.

As prescribed in 22.1408(a), insert the following clause:

AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—

(1) Recruitment, advertising, and job application procedures;
(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
(3) Rates of pay or any other form of compensation and changes in compensation;
(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
(5) Leaves of absence, sick leave, or any other leave;
(6) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
(7) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
(8) Activities sponsored by the Contractor, including social or recreational programs; and
(9) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings. (1) The Contractor agrees to post employment notices stating—

(i) The Contractor’s obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken...
Federal Acquisition Regulation

52.222–38

under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

Alternate I (JUN 1998). As prescribed in 22.1408(b), add the following as a preamble to the clause:

NOTICE: The following term(s) of this clause are waived for this contract:

[List term(s)].

[63 FR 34075, June 22, 1998]

52.222–37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

As prescribed in 22.1310(b), insert the following clause:

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS–100, entitled "Federal Contractor Veterans Employment Report (VETS–100 Report)."

(c) The Contractor shall submit VETS–100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO–1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)


52.222–38 Compliance with Veterans’ Employment Reporting Requirements.

As prescribed in 22.1310(c), insert the following provision:

COMPLIANCE WITH VETERANS’ EMPLOYMENT REPORTING REQUIREMENTS (DEC 2001)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e., if it has any contract containing Federal Acquisition Regulation clause 52.222–37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), it has submitted the most recent VETS–100 Report required by that clause.

(End of provision)

[66 FR 53491, Oct. 22, 2001]
52.222–39 Notification of Employee Rights Concerning Payment of Union Dues or Fees

As prescribed in 22.1605, insert the following clause:

NOTIFICATION OF EMPLOYER RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)

(a) Definition. As used in this clause—
United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151–188)).

Notice to Employees

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:
National Labor Relations Board
Division of Information
1099 14th Street, N.W.
Washington, DC 20570
1–866–667–6572 (TTY)

To locate the nearest NLRB office, see NLRB’s website at http://www.nlrb.gov.

(c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR part 470, and orders of the Secretary of Labor.

(d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR part 470, subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 470, which implements Executive Order 13201, or are otherwise provided by law.

(e) The requirement to post the employee notice in paragraph (b) does not apply to—
(1) Contractors and subcontracts that employ fewer than 15 persons;
(2) Contractor establishments or construction work sites located in a jurisdiction where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor’s employees;
(3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;
(4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor’s facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that—
(i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and
(ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or
(5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.

(f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall—

(1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department’s Office of Labor-
Federal Acquisition Regulation


As prescribed in 22.1006(a), insert the following clause:

SERVICE CONTRACT ACT OF 1965 (NOV 2007)

(a) Definitions. As used in this clause—


Contractor when this clause is used in any subcontract, shall be deemed to refer to the subcontractor, except in the term “Government Prime Contractor.”

Service employee means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in part 541 of title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) Applicability. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in subpart C of 29 CFR part 4.

(c) Compensation. (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conforming class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees’ authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected
employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(a) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(b) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conformance actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefit rates which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of Compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) Obligation to Furnish Fringe Benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with subpart D of part 4 of this part.

(e) Minimum Wage. In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) Successor Contracts. If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved...
Federal Acquisition Regulation

52.222-41

of the foregoing obligation unless the limitations of 29 CFR 4.11(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (33 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (33 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (33 Comp. Gen. 401 (1973)).

(g) Notification to Employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) Safe and Sanitary Working Conditions. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR part 1926.

(i) Records. (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act—
(A) Name and address and social security number;
(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
(C) Daily and weekly hours worked by each employee; and
(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) Pay Periods. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) Withholding of Payments and Termination of Contract. The Contracting Officer...
shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) Subcontracts. The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) Collective Bargaining Agreements Applicable to Service Employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) Seniority List. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names, of all service employees on the Contractor’s or subcontractor’s payroll during the last month of contract performance.

Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall furnish the successor Contractor at the commencement of the succeeding contract.

(o) Rulings and Interpretations. Rulings and interpretations of the Act are contained in Regulations, 29 CFR part 4.

(p) Contractor’s Certification. (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor’s firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.


(q) Variations, Tolerances, and Exemptions Involving Employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 530, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards
Federal Acquisition Regulation

52.222–43

Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.

(r) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship and Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman’s rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations 29 CFR part 531. However, the amount of credit shall not exceed $1.34 per hour beginning January 1, 1981. To use this provision—

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) Disputes Concerning Labor Standards. The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract.

Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)


52.222–42 Statement of Equivalent Rates for Federal Hires.

As prescribed in 22.1006(b), insert the following clause:

STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR part 5), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

THIS STATEMENT IS FOR INFORMATION ONLY: IT IS NOT A WAGE DETERMINATION

Employee class Monetary wage—Fringe benefits

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(End of clause)

[54 FR 19831, May 8, 1989]

52.222–43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).

As prescribed in 22.1006(c)(1), insert the following clause:
52.222–44

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (SEP 2009)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the Contractor’s actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of $4.00 per hour. The Contractor chose to pay $4.10. The new wage determination increases the rate to $4.50 per hour. Even if the Contractor voluntarily increases the rate to $4.75 per hour, the allowable price adjustment is $.40 per hour;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after final payment under the contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (d) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers’ compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. If the notice shall contain a statement of the amount claimed and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract), and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

(End of clause)


As prescribed in 22.1006(c)(2), insert the following clause:

**FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (SEP 2009)**

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to Contractor collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with—

(1) An increased or decreased wage determination applied to this contract by operation of law; or
52.222–46 Evaluation of Compensation for Professional Employees.

As prescribed in 22.1103, insert the following provision:

Evaluation of Compensation for Professional Employees (FEB 1993)

(a) Recompetition of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the Government’s best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As a part of their proposals, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror’s ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, proposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor’s ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

(End of provision)

As prescribed in 22.1006(e)(1), insert the following provision:

EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT CERTIFICATION (FEB 2009)

(a) The offeror shall check the following certification:

CERTIFICATION

The offeror □ does □ does not certify that—

(1) The items of equipment to be serviced under this contract are used regularly for other than Government purposes, and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontractor) in substantial quantities to the general public in the course of normal business operations;

(2) The services will be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of equipment.

(i) An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the offeror, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public;

(ii) An “established market price” is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or offeror; and

(3) The compensation (wage and fringe benefits) plan for all service employees servicing the same equipment of commercial customers.

(b) Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services. If the offeror certifies to the conditions in paragraph (a) of this provision, and the Contracting Officer determines in accordance with FAR 22.1003–4(c)(3) that the Service Contract Act—

(1) Will not apply to this offeror, then the Service Contract Act of 1965 clause in this solicitation will not be included in any resultant contract to this offeror; or

(2) Will apply to this offeror, then the clause at 52.222–51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements, in this solicitation will not be included in any resultant contract awarded to this offeror, and the offeror may be provided an opportunity to submit a new offer on that basis.

(c) If the offeror does not certify to the conditions in paragraph (a) of this provision—

(1) The clause in this solicitation at 52.222–51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements, will not be included in any resultant contract awarded to this offeror; and

(2) The offeror shall notify the Contracting Officer as soon as possible, if the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation.

(d) The Contracting Officer may not make an award to the offeror, if the offeror fails to execute the certification in paragraph (a) of this provision or to contact the Contracting Officer as required in paragraph (c) of this provision.

(End of provision)


52.222–49 Service Contract Act—Place of Performance Unknown.

As prescribed in 22.1006(f), insert the following clause:

SERVICE CONTRACT ACT—PLACE OF PERFORMANCE UNKNOWN (MAY 1989)

(a) This contract is subject to the Service Contract Act, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage determinations have also been requested for the following:

(1) Insert places or areas.

(b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been attached or requested may nevertheless submit bids or proposals. However, a wage determination shall be requested and incorporated in the resultant contract retroactive to the date of contract award, and there shall be no adjustment in the contract price.
Federal Acquisition Regulation

52.222-50 Combating Trafficking in Persons

As prescribed in 22.1705(a), insert the following clause:

COMBATING TRAFFICKING IN PERSONS (FEB 2009)

(a) Definitions. As used in this clause—

Coercion means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor or his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Employee means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

Forced Labor means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

Involuntary servitude includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

Severe forms of trafficking in persons means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

Sex trafficking means any sex act on account of which anything of value is given to or received by any person.

Trade means—

(1) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(2) The abuse or threatened abuse of the legal process.

Torture means—

(1) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(2) The abuse or threatened abuse of the legal process.

(b) Policy. The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract; or

(3) Use forced labor in the performance of the contract.

(c) Contractor requirements. The Contractor shall—

(1) Notify its employees of—

(i) The United States Government’s zero tolerance policy described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in subsection (b) of this clause.

(d) Notification. The Contractor shall inform the Contracting Officer immediately of—

(1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and

(2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

(e) Remedies. In addition to other remedies available to the Government, the Contractor’s failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may result in—

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in
which the Government determined Contractor non-compliance;
(5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
(6) Suspension or debarment.

Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.

Mitigating Factor. The Contracting Officer may consider whether the Contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State’s Office to Monitor and Combat Trafficking in Persons at http://www.state.gov/g/tip.

(End of clause)

Alternate I (AUG 2007). As prescribed in 22.1705(b), substitute the following paragraph in place of paragraph (c)(1)(i) of the basic clause:

(i)(A) The United States Government’s zero tolerance policy described in paragraph (b) of this clause; and
(B) The following directive(s) or notice(s) applicable to employees performing work at the contract place(s) of performance as indicated below:

<table>
<thead>
<tr>
<th>Document Title</th>
<th>Document may be obtained from:</th>
<th>Applies Performance to in/at:</th>
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<tbody>
<tr>
<td>[Contracting Officer shall insert title of directive/notice; indicate the document is attached or provide source (such as website link) for obtaining document; and, indicate the contract performance location outside the U.S. to which the document applies.]</td>
<td></td>
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</table>

(End of clause)

52.222–51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.

As prescribed in 22.1006(e)(2), insert the following clause:

EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT—REQUIREMENTS (NOV 2007)

(a) The items of equipment to be serviced under this contract are used regularly for other than Government purposes, and are sold or traded by the Contractor in substantial quantities to the general public in the course of normal business operations.

(b) The services shall be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of equipment.

(1) An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(2) An “established market price” is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor.

(c) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract shall be the same as that used for these employees and for equivalent employees servicing the same equipment of commercial customers.

(d) The Contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The Contractor shall determine the applicability of this exemption to any subcontract on or before subcontract award. In making a judgment that the exemption applies, the Contractor shall consider all factors and make an affirmative determination that all of the conditions in paragraphs (a) through (c) of this clause will be met.

(e) If the Department of Labor determines that any conditions for exemption in paragraphs (a) through (c) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Act. In such case, the procedures at 29 CFR 4.123(e)(1)(iv) and 29 CFR 4.5(c) will be followed.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts for exempt services under this contract.

(End of clause)
52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.

As prescribed in 22.1006(e)(3), insert the following provision:

EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT TO CONTRACTS FOR CERTAIN SERVICES—CERTIFICATION (NOV 2007)

(a) The offeror shall check the following certification:

CERTIFICATION

The offeror □ does □ does not certify that—

(1) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(2) The contract services are furnished at prices that are, or are based on, established catalog or market prices. An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the offeror, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An “established market price” is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or offeror;

(3) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours during the contract period) servicing the Government contract; and

(4) The offeror uses the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the offeror uses for these employees and for equivalent employees servicing commercial customers.

(b) Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services. If the offeror certifies to the conditions in paragraph (a) of this provision, and the Contracting Officer determines in accordance with FAR 22.1003-4(d)(3) that the Service Contract Act—

(1) Will not apply to this offeror, then the Service Contract Act of 1965 clause in this solicitation will not be included in any resultant contract to this offeror; or

(2) Will apply to this offeror, then the clause at FAR 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements, in this solicitation will not be included in any resultant contract awarded to this offer, and the offeror may be provided an opportunity to submit a new offer on that basis.

(c) If the offeror does not certify to the conditions in paragraph (a) of this provision—

(1) The clause of this solicitation at 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements, will not be included in any resultant contract to this offeror; and

(2) The offeror shall notify the Contracting Officer as soon as possible if the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation.

(d) The Contracting Officer may not make an award to the offeror, if the offeror fails to execute the certification in paragraph (a) of this provision or to contact the Contracting Officer as required in paragraph (c) of this provision.

(End of provision)

[72 FR 63082, Nov. 7, 2007]

52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements.

As prescribed in 22.1006(e)(4), insert the following clause:

EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT TO CONTRACTS FOR CERTAIN SERVICES—REQUIREMENTS (FEB 2009)

(a) The services under this contract are offered and sold regularly to non-Governmental customers, and are provided by the Contractor to the general public in substantial quantities in the course of normal business operations.

(b) The contract services are furnished at prices that are, or are based on, established catalog or market prices. An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An “established market price” is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor.
(c) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract.

(d) The Contractor uses the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the Contractor uses for these employees and for equivalent employees servicing commercial customers.

(e)(1) Except for services identified in FAR 22.1803-4(d)(1)(iv), the subcontractor for exempt services shall be selected for award based on other factors in addition to price or cost with the combination of other factors at least as important as price or cost; or

(2) A subcontract for exempt services shall be awarded on a sole source basis.

(f) The Contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The Contractor shall determine in advance, based on the nature of the subcontract requirements and knowledge of the practices of likely subcontractors, that all or nearly all likely subcontractors will meet the conditions in paragraphs (a) through (d) of this clause. If the services are currently being performed under a subcontract, the Contractor shall consider the practices of the existing subcontractor in making a determination regarding the conditions in paragraphs (a) through (d) of this clause. If the Contractor has reason to doubt the validity of the certification, the requirements of the Service Contract Act shall be included in the subcontract.

(g) If the Department of Labor determines that any conditions for exemption at paragraphs (a) through (e) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Act. In such case, the procedures in at 29 CFR 4.123(c)(2)(ii) and 29 CFR 4.5(c) will be followed.

(h) The Contractor shall include the substance of this clause, including this paragraph (h), in subcontracts for exempt services under this contract.

(End of clause)


52.222–54 Employment Eligibility Verification.

As prescribed in 22.1803, insert the following clause:

EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)

(a) Definitions. As used in this clause—

Commerically available off-the-shelf (COTS) item—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);
(ii) Sold in substantial quantities in the commercial marketplace; and
(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

Employee assigned to the contract means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and
(2) Does not perform any substantial duties applicable to the contract.

Subcontract means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

United States, as defined in 48 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) Enrollment and verification requirements.

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

(i) Enroll. Enroll as a Federal Contractor in E-Verify at time of contract award; and
(ii) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business
days after the date of hire (but see paragraph (b)(3) of this section); and
(iii) Verify employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the contract, whichever date is later (but see paragraph (b)(3) of this section).
(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—
(i) All new employees. (A) Enrolled 90 calendar days or more. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or
(B) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or
(ii) Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(3) of this section).
(iii) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor’s MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.
(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.
(c) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: http://www.dhs.gov/E-Verify.
(4) Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—
(i) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;
(ii) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or
(e) Subcontracts. The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—
(i) Is for—(1) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or
(ii) Construction;
(ii) Has a value of more than $3,000; and
(iii) Includes work performed in the United States.
52.223–1 Biobased Product Certification.

As prescribed in 23.406(a), insert the following provision:

BIODETASE PRODUCT CERTIFICATION (DEC 2007)

As required by the Farm Security and Rural Investment Act of 2002 and the Energy Policy Act of 2005 (7 U.S.C. 8102(c)(3)), the offeror certifies, by signing this offer, that biobased products (within categories of products listed by the United States Department of Agriculture in 7 CFR part 2902, subpart B) to be used or delivered in the performance of the contract, other than biobased products that are not purchased by the offeror as a direct result of this contract, will comply with the applicable specifications or other contractual requirements.

(End of provision)

[72 FR 63045, Nov. 7, 2007]


As prescribed in 23.406(b), insert the following clause:

AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (DEC 2007)

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless—

(1) The product cannot be acquired—

(i) Competitively within a time frame providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 2902.10 et seq.). For example, some USDA-designated items such as mobile equipment hydraulic fluids, diesel fuel additives, and penetrating lubricants are excluded from the preferred procurement requirement for the application of the USDA-designated item to one or both of the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, i.e., a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at http://www.usda.gov/biopreferred.

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

Material (If none, insert None)

Identification No.

(End of clause)

[72 FR 63045, Nov. 7, 2007]

52.223–3 Hazardous Material Identification and Material Safety Data.

As prescribed in 23.303, insert the following clause:

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)

(a) Hazardous material, as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (If none, insert None)
Federal Acquisition Regulation

52.223–5

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government’s rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to—
   (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
   (ii) Obtain medical treatment for those affected by the material; and
   (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in preference over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

Alternate I (JUL 1995). If the contract is awarded by an agency other than the Department of Defense, add the following paragraph (i) to the basic clause:

(i) Except as provided in paragraph (i)(2) the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS’s), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS’s to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS’s in or on each shipping container. If affixed to the outside of each container, the MSDS must be placed in a weather resistant envelope.


52.223–4 Recovered Material Certification.

As prescribed in 23.406(c), insert the following provision:

RECOVERED MATERIAL CERTIFICATION (MAY 2008)

As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(1)), the offeror certifies, by signing this offer, that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the contract will be at least the amount required by the applicable contract specifications or other contractual requirements.

(End of provision)


52.223–5 Pollution Prevention and Right-to-Know Information.

As prescribed in 23.1005, insert the following clause:

POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003)

(a) Definitions. As used in this clause—

Priority chemical means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

Toxic chemical means a chemical or chemical category listed in 40 CFR 372.65.


(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

(1) The emergency planning reporting requirements of section 302 of EPCRA.

(2) The emergency notice requirements of section 304 of EPCRA.

(3) The list of Material Safety Data Sheets, required by section 311 of EPCRA.

(4) The emergency and hazardous chemical inventory forms of section 312 of EPCRA.
52.223–6

Drug-Free Workplace.

As prescribed in 23.505, insert the following clause:

DRUG-FREE WORKPLACE (MAY 2001)

(a) Definitions. As used in this clause—

Controlled substance means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11–1308.15.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

Drug-free workplace means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Employee means an employee of a Contractor directly engaged in the performance of work under a Government contract. Directly engaged is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

Individual means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration); or as soon as possible for contracts of less than 30 days performance duration—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The contractor’s policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee’s conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health,
Federal Acquisition Regulation

52.223-9 Notice of radioactive materials.

As prescribed in 23.602, insert the following clause:

NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

(a) The Contractor shall notify the Contracting Officer or designee, in writing, *days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall—

(1) Be submitted in writing;
(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and
(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

(End of clause)

* * *

52.223-8 [Reserved]

52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Items.

As prescribed in 23.406(d), insert the following clause:

ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED ITEMS (MAY 2008)

(a) Definitions. As used in this clause—

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material."

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall—

(1) Estimate the percentage of the total recovered material content for EPA-designated materials.
item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and

(2) Submit this estimate to
[Contracting Officer complete in accordance with agency procedures].

(End of clause)

Alternate I (MAY 2008). As prescribed in 23.406(d), redesignate paragraph (b) of the basic clause as paragraph (c) and add the following paragraph (b) to the basic clause:

(b) The Contractor shall execute the following certification required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962, et seq.):

CERTIFICATION

I, (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA-designated items met the applicable contract specifications or other contractual requirements.

(Signature of the Officer or Employee)

(Typed Name of the Officer or Employee)

(Title)

(Name of Company, Firm, or Organization)

(Date)

(End of certification)

[65 FR 36021, June 6, 2000, as amended at 72 FR 73218, Dec. 26, 2007]

52.223–11 Ozone-Depleting Substances.

As prescribed in 23.804(a), insert the following clause:

OZONE-DEPLETING SUBSTANCES (MAY 2001)

(a) Definition. Ozone-depleting substance, as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR part 82, subpart E, as follows:

“WARNING: Contains (or manufactured with, if applicable) *{a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere}.”

* The Contractor shall insert the name of the substance(s).

(End of clause)

[65 FR 36021, June 6, 2000, as amended at 72 FR 73218, Dec. 26, 2007]

52.223–12 Refrigeration Equipment and Air Conditioners.

As prescribed in 23.804(b), insert the following clause:

REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)

The Contractor shall comply with the applicable requirements of sections 608 and 609.
Federal Acquisition Regulation

of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

(End of clause)

[60 FR 28501, May 31, 1995]


As prescribed in 23.906(a), insert the following provision:

CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

(a) Executive Order 13148, of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

(b) By signing this offer, the offeror certifies that—

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313 (a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: (Check each block that is applicable.)

☐ (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.45;

☐ (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

☐ (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

☐ (iv) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094).

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4933 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), 5169, 5771, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis)); or

☐ (v) The facility is not located in the United States or its outlying areas.

(End of provision)


As prescribed in 23.906(b), insert the following clause:

TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313 (a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023 (a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.45;

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(i) Major group code 10 (except 1011, 1081, and 1094).

(ii) Major group code 12 (except 1241).
(iii) Major group codes 20 through 39.
(iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).
(v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or
(vi) The facility is not located in the United States or its outlying areas.
(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt—
(1) The Contractor shall notify the Contracting Officer; and
(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.
(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.
(e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall:
(1) For competitive subcontracts expected to exceed $100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-15, Certification of Toxic Chemical Release Reporting; and
(2) Include in any resultant subcontract exceeding $100,000 (including all options), the substance of this clause, except this paragraph (e).

Energy-efficient product—(1) Means a product that—
(i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or
(ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program.
(2) The term “product” does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).
(b) The Contractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are—
(1) Delivered;
(2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;
(3) Furnished by the Contractor for use by the Government;
(4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.
(c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless—
(1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
(2) Otherwise approved in writing by the Contracting Officer.
(d) Information about these products is available for—
(1) ENERGY STAR® at http://www.energystar.gov/products; and
(2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html.


As prescribed in 23.206(b)(1), insert the following clause:

IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS.

As prescribed in 23.706(b)(1), insert the following clause:

IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS (DEC 2007)

(a) Definitions. As used in this clause—

Computer monitor means a video display unit used with a computer.
Desktop computer means a computer designed for use on a desk or table.
Notebook computer means a portable-style or laptop-style computer system.
Personal computer product means a notebook computer, a desktop computer, or a
Federal Acquisition Regulation

52.224-2

computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Bronze registered or higher. Bronze is the first level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

(c) For information about the standard, see http://www.epeat.net.

(End of clause)

Alternate I (DEC 2007). As prescribed in 23.706(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Silver registered or higher. Silver is the second level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

[72 FR 73218, Dec. 26, 2007]

52.224-1 Privacy Act Notification.

As prescribed in 24.104, insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

(End of clause)

52.224-2 Privacy Act.

As prescribed in 24.104, insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

PRIVACY ACT (APR 1984)

(a) The Contractor agrees to—

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies—

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the design, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or
employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor and any employee of the Contractor is considered to be an employee of the agency.

(c)(1) *Operation of a system of records,* as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) *Record,* as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person’s name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) *System of records on individuals,* as used in this clause means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(End of clause)

52.225–1 Buy American Act—Supplies.

As prescribed in 25.1101(a)(1), insert the following clause:

**BUY AMERICAN ACT—SUPPLIES.** (FEB 2009)

(a) **Definitions.** As used in this clause—

- Commercially available off-the-shelf (COTS) item—(1) Means any item of supply (including construction material) that is—
  - (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
  - (ii) Sold in substantial quantities in the commercial marketplace; and
  - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
  - (2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

- Component means an article, material, or supply incorporated directly into an end product.

- Cost of components means—
  - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
  - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

- Domestic end product means—
  - (1) An unmanufactured end product mined or produced in the United States;
  - (2) An end product manufactured in the United States, if—
    - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or
    - (ii) The end product is a COTS item.

- End product means those articles, materials, and supplies to be acquired under the contract for public use.

- Foreign end product means an end product other than a domestic end product.

- United States means the 50 States, the District of Columbia, and outlying areas.

- Foreign end product means those articles, materials, and supplies to be acquired under the contract for public use.

(b) The Buy American Act (41 U.S.C. 10a - 10l) provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 45l, the component test of the Buy American Act is waived for an end product that is a COTS item (See 12.505(a)(1)).

- Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.
- (d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled “Buy American Act Certificate.”

(End of clause)

52.225–2 Buy American Act Certificate.

As prescribed in 25.1101(a)(2), insert the following provision:
BUY AMERICAN ACT CERTIFICATE (FEB 2009)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.” The terms “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Supplies.”

(b) Foreign End Products:

Line Item No.:

Country of Origin:

(List as necessary)

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of provision)

52.225-3 Buy American Act—Free Trade Agreements—Israeli Trade Act.

As prescribed in 25.1101(b)(1)(i), insert the following clause:

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT (JUN 2009)

(a) Definitions. As used in this clause—

Bahrainian, Moroccan, Omani, or Peruvian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain, Morocco, Oman, or Peru;

or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Morocco, Oman, or Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Commercially available off-the-shelf (COTS) item—(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace, and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Domestic end product means—

(1) An unmanufactured end product mined or produced in the United States;

(2) An end product manufactured in the United States that—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(ii) The end product is a COTS item.

End product means those articles, materials, and supplies to be acquired under the contract for public use.

Free Trade Agreement country means Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore.

Free Trade Agreement country end product means an article that—
(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or
(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Israeli end product means an article that—
(1) Is wholly the growth, product, or manufacture of Israel; or
(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Israel into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) Components of foreign origin. Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(c) Delivery of end products. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for an end product that is a COTS item (See 12.505(a)(1)). In addition, the Contracting Officer has determined that FTAs (except the Bahrain, Morocco, Oman, and Peru FTAs) and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, NAFTA applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.” If the Contractor specified in its offer that the Contractor would supply a Canadian end product, then the Contractor shall supply a Canadian end product or, at the Contractor’s option, a domestic end product.

Alternate I (JAN 2004). As prescribed in 25.1101(b)(1)(ii), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (c) for paragraph (c) of the basic clause:

Canadian end product means an article that—
(1) Is wholly the growth, product, or manufacture of Canada; or
(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Alternate II (JAN 2004). As prescribed in 25.1101(b)(1)(ii), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (c) for paragraph (c) of the basic clause:

Canadian end product means an article that—
(1) Is wholly the growth, product, or manufacture of Canada; or
(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the
value of those incidental services does not exceed that of the article itself.

(c) Delivery of end products. The Contracting Officer has determined that NAFTA and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.” If the Contractor specified in its offer that the Contractor would supply a Canadian end product or an Israeli end product, then the Contractor shall supply a Canadian end product, an Israeli end product or, at the Contractor’s option, a domestic end product.


As prescribed in 25.1101(b)(2)(i), insert the following provision:

**BUY AMERICAN ACT—FREE TRADE AGREEMENT—ISRAELI TRADE ACT CERTIFICATE** (JUN 2009)

(a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian, Moroccan, Omani, or Peruvian end product,” “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.”

(b) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

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<tr>
<th>Line Item No.</th>
<th>Country of Origin</th>
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</table>

(c) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.”

Other Foreign End Products:

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<tr>
<th>Line Item No.</th>
<th>Country of Origin</th>
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</table>

(d) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of provision)

**Alternate I** (JAN 2004). As prescribed in 25.1101(b)(2)(ii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act—Balance of Payments Program”:

**Canadian End Products:**

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<tr>
<th>Line Item No.</th>
<th>Country of Origin</th>
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</table>

(End of provision)

**Alternate II** (JAN 2004). As prescribed in 25.1101(b)(2)(iii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act—Balance of Payments Program”:

**Canadian End Products:**

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<tr>
<th>Line Item No.</th>
<th>Country of Origin</th>
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</table>
52.225–5 Trade Agreements.

As prescribed in 25.1101(c)(1), insert the following clause:

**TRADE AGREEMENTS (AUG 2009)**

(a) Definitions. As used in this clause—

(i) Caribbean Basin country end product—

(A) Means an article that—

(i) Is wholly the growth, product, or manufacture of a Caribbean Basin country;

or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed;

and

(ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2702(b).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(i) Tuna, prepared or preserved in any manner in airtight containers;

(ii) Petroleum, or any product derived from petroleum;

(iii) watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (i.e., Afghanistan, Cuba, Laos, North Korea, and Vietnam); and

(iv) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;

(b) Access to the HTSUS to determine duty-free status of articles of these types is available at [http://www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/). In particular, see the following:

(1) General Note 3(c), Products Eligible for Special Tariff treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Designated country means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei))”, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); and

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

Designated country end product means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

End product means those articles, materials, and supplies to be acquired under the contract for public use.

Free Trade Agreement country end product means an article that—
Federal Acquisition Regulation

52.225–6

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Least developed country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

United States means the 50 States, the District of Columbia, and outlying areas.

U.S.-made end product means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

WTO GPA country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(b) Delivery of end products. The Contracting Officer has determined that the WTO GPA and FTAs apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made or designated country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled “Trade Agreements Certificate.”

(End of clause)

52.225–6 Trade Agreements Certificate.

As prescribed in 25.1101(c)(2), insert the following provision:

TRADE AGREEMENTS CERTIFICATE (JAN 2005)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled “Trade Agreements.”

(b) The offeror shall list as other end products those supplies that are not U.S.-made or designated country end products.

Other End Products

Line Item No.:
52.225–7 Waiver of Buy American Act for Civil Aircraft and Related Articles.

As prescribed in 25.1101(d), insert the following provision:

WAIVER OF BUY AMERICAN ACT FOR CIVIL AIRCRAFT AND RELATED ARTICLES (FEB 2000)

(a) Definition. Civil aircraft and related articles, as used in this provision, means—

(1) All aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard;

(2) The engines (and parts and components for incorporation into the engines) of these aircraft;

(3) Any other parts, components, and subassemblies for incorporation into the aircraft; and

(4) Any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft, and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act.

(b) The U.S. Trade Representative has waived the Buy American Act for acquisitions of civil aircraft and related articles from countries that are parties to the Agreement on Trade in Civil Aircraft. Those countries are Austria, Belgium, Bulgaria, Canada, Denmark, Egypt, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Macao, the Netherlands, Norway, Portugal, Romania, Spain, Sweden, Switzerland, and the United Kingdom.

(c) For the purpose of this waiver, an article is a product of a country only if—

(1) It is wholly the growth, product, or manufacture of that country; or

(2) In the case of an article that consists in whole or in part of materials from another country, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

(d) The waiver is subject to modification or withdrawal by the U.S. Trade Representative.

(End of provision)

[64 FR 72436, Dec. 27, 1999]

52.225–8 Duty-Free Entry.

As prescribed in 25.1101(e), insert the following clause:

DUTY-FREE ENTRY (FEB 2000)

(a) Definition. Customs territory of the United States means the States, the District of Columbia, and Puerto Rico.

(b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

(c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:

(1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of $10,000 that are to be imported into the customs territory of the United States for delivery to the Government under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the—

(i) Foreign supplies;

(ii) Estimated amount of duty; and

(iii) Country of origin.

(2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor’s notification.

(3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

(d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if—

(1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.
(f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.

(g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the—

(1) Delivery address of the Contractor (or contracting agency, if appropriate);
(2) Government prime contract number;
(3) Identification of carrier;
(4) Notation ‘‘UNITED STATES GOVERNMENT’’ [agency].

Duty-free entry to be claimed pursuant to Item No(s) [from Tariff Schedules] Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501–A and any required duty-free entry certificates.”;

(5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
(6) Estimated value in United States dollars.

(h) The Contractor shall instruct the foreign supplier to—

(1) Consign the shipment as specified in paragraph (g) of this clause;
(2) Mark all packages with the words ‘‘UNITED STATES GOVERNMENT’’ and the title of the contracting agency; and
(3) Include with the shipment at least two copies of the bill of lading (or other shipping documents) for use by the District Director of Customs at the port of entry.

(i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the—

(1) Foreign supplies;
(2) Country of origin;
(3) Contract number; and
(4) Scheduled delivery date(s).

(j) The Contractor shall include the substance of this clause in any subcontract if—

(1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or
(2) Other foreign supplies in excess of $10,000 may be imported into the customs territory of the United States.

(End of clause)

[64 FR 72436, Dec. 27, 1999]
Item 2

<table>
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<th>Unit of measure</th>
<th>Quantity</th>
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<td>Domestic construction material</td>
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</tbody>
</table>

Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued). List name, address, telephone number, and contact for suppliers surveyed. Attach copy of responses; if oral, attach summary.
Federal Acquisition Regulation


As prescribed in 25.1102(b)(1), insert the following provision:

NOTICE OF BUY AMERICAN ACT REQUIREMENT—CONSTRUCTION MATERIALS (FEB 2009)

(a) Definitions. ''Commercially available off-the-shelf (COTS) item,'' ''construction material,'' ''domestic construction material,'' and ''foreign construction material,'' as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials” (Federal Acquisition Regulation (FAR) clause 52.225-9).

(b) Requests for determinations of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers. (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225-9.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception based on unreasonable cost, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) Alternate offers. (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (MAY 2002). As prescribed in 25.1102(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) Requests for determinations of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9.

52.225-11 Buy American Act—Construction Materials under Trade Agreements.

As prescribed in 25.1102(c), insert the following clause:

BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (AUG 99)

(a) Definitions. As used in this clause—

Caribbean Basin country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials...
from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

_Commercially available off-the-shelf (COTS) item_—(1) Means any item of supply (including construction material) that is—

(1) A commercial item (as defined in paragraph (1) of the definition of FAR 2.101); and

(2) Sold in substantial quantities in the commercial marketplace; and

(3) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

_Component_ means an article, material, or supply incorporated directly into a construction material.

*Construction material* means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes any item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

_Cost of components_ means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

_Designed country_ means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

_Designed country construction material_ means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

_Domestic construction material_ means—

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

_Foreign construction material_ means a construction material other than a domestic construction material.

_Free Trade Agreement country construction material_ means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a
Federal Acquisition Regulation 52.225-11

new and different construction material distinct from the materials from which it was transformed.

Least developed country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

United States means the 50 States, the District of Columbia, and outlying areas.

WTO GPA country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials. (1) This clause implements the Buy American Act (41 U.S.C. 10a–10d) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item (see FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated county construction materials.

(2) The Contractor shall use only domestic or designated county construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows: [Contracting Officer to list applicable excepted materials or indicate “none”]

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act. (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

195
52.225–12

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

<table>
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<th>Construction material description</th>
<th>Unit of measure</th>
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1Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

(End of clause)

Alternate I (JUN 2009). As prescribed in 25.1102(c)(3), add the following definition of “Bahrainian, Mexican, or Omani construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

Bahrainian, Mexican, or Omani construction material means a construction material that—

1 Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; or
2 In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Mexico, or Oman into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials. (1) This clause implements the Buy American Act (41 U.S.C. 10a–10d) by providing a preference for domestic construction materials. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR 12.5(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except the Bahrain FTA, NAFTA, and the Oman FTA apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials other than Bahrainian, Mexican, or Omani construction materials.

(2) The Contractor shall use only domestic or designated country construction material other than Bahrainian, Mexican, or Omani construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.


As prescribed in 25.1102(d)(1), insert the following provision:

NOTICE OF BUY AMERICAN ACT REQUIREMENT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (FEB 2009)

(a) Definitions. “Commercially available off-the-shelf (COTS) item,” “construction material,” “designated country construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225–11).

(b) Requests for determination of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225–11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers. (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of each foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225–11.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not
request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) Alternate offers. (1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225–11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225–11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225–11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (MAY 2002). As prescribed in 25.1102(d)(2), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) Requests for determination of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225–11.

Alternate II “(JUN 2009)”. As prescribed in 25.1102(d)(3), add the definition of “Bahrainian, Mexican, or Omani construction material” to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) Alternate offers. (1) When an offer includes foreign construction material, except foreign construction material from a designated country other than Bahrain, Mexico, or Oman that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225–11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material other than Bahrainian, Mexican, or Omani construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225–11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225–11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material other than Bahrainian, Mexican, or Omani construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

52.225–13 Restrictions on Certain Foreign Purchases.

As prescribed in 25.1103(a), insert the following clause:

Restrictions on Certain Foreign Purchases (JUN 2008)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC’s implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities

197
and individuals subject to economic sanctions are included in OFAC’s List of Specially Designated Nationals and Blocked Persons at http://www.treas.gov/offices/enforcement/ofac. More information about these restrictions, as well as updates, is available in the OFAC’s regulations at 31 CFR chapter V and/or on OFAC’s Web site at http://www.treas.gov/offices/enforcement/ofac.

The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)


52.225–14  INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT.

As prescribed in 25.1103(b), insert the following clause:

INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (FEB 2000)

In the event of inconsistency between any terms of this contract and any translation into another language, the English language meaning shall control.

(End of clause)

[64 FR 72440, Dec. 27, 1999]

52.225–15—52.225–16  [Reserved]

52.225–17  EVALUATION OF FOREIGN CURRENCY OFFERS.

As prescribed in 25.1103(c), insert the following provision:

EVALUATION OF FOREIGN CURRENCY OFFERS (FEB 2000)

If the Government receives offers in more than one currency, the Government will evaluate offers by converting the foreign currency to United States currency using (Contracting Officer to insert source of rate) in effect as follows:

(a) For acquisitions conducted using sealed bidding procedures, on the date of bid opening.

(b) For acquisitions conducted using negotiation procedures—

(1) On the date specified for receipt of offers, if award is based on initial offers; otherwise

(2) On the date specified for receipt of proposal revisions.

(End of provision)


52.225–18  PLACE OF MANUFACTURE.

As prescribed in 25.1101(f), insert the following solicitation provision:

PLACE OF MANUFACTURE (SEP 2006)

(a) Definitions. As used in this clause—

Manufactured end product means any end product in Federal Supply Classes (FSC) 1000–9999, except—

(1) FSC 5510, Lumber and Related Basic Wood Materials;

(2) Federal Supply Group (FSG) 87, Agricultural Supplies;

(3) FSG 88, Live Animals;

(4) FSC 89, Food and Related Consumables;

(5) FSC 9410, Crude Grades of Plant Materials;

(6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;

(7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;

(8) FSC 9610, Ores;

(9) FSC 9620, Minerals, Natural and Synthetic; and

(10) FSC 9630, Additive Metal Materials.

Place of manufacture means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

(b) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—

(1) In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2) Outside the United States.

(End of provision)

[71 FR 57378, Sept. 28, 2006]

52.225–19  CONTRACTOR PERSONNEL IN A DESIGNATED OPERATIONAL AREA OR SUPPORTING A DIPLOMATIC OR CONSULAR MISSION OUTSIDE THE UNITED STATES.

As prescribed in 25.301–4, insert the following clause:
CONTRACTOR PERSONNEL IN A DESIGNATED OPERATIONAL AREA OR SUPPORTING A DIPLOMATIC OR CONSULAR MISSION OUTSIDE THE UNITED STATES (MAR 2008)

(a) Definitions. As used in this clause—

Chief of mission means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 522(c) of the Foreign Service Act of 1980 (Pub. L. 96–465) to be temporarily in charge of such a mission or office.

Combatant commander means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

Designated operational area means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations.

Supporting a diplomatic or consular mission means performing outside the United States under a contract administered by Federal agency personnel who are subject to the direction of a chief of mission.

(b) General. (1) This clause applies when Contractor personnel are required to perform outside the United States—

(i) In a designated operational area during—

(A) Contingency operations;
(B) Humanitarian or peacekeeping operations; or
(C) Other military operations; or military exercises, when designated by the Combatant Commander; or

(ii) When supporting a diplomatic or consular mission—

(A) That has been designated by the Department of State as a danger pay post (see http://aoprals.state.gov/Web920/danger_pay_all.asp); or

(B) That the Contracting Officer has indicated is subject to this clause.

(2) Contract performance may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.

(3) Contractor personnel are civilians.

(i) Except as provided in paragraph (b)(3)(ii) of this clause, and in accordance with paragraph (1)(3) of this clause, Contractor personnel are only authorized to use deadly force in self-defense.

(ii) Contractor personnel performing security functions are also authorized to use deadly force when use of such force reasonably appears necessary to execute their security mission to protect assets/persons, consistent with the terms and conditions contained in the contract or with their job description and terms of employment.

(4) Service performed by Contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.

(c) Support. Unless specified elsewhere in the contract, the Contractor is responsible for all logistical and security support required for Contractor personnel engaged in this contract.

(d) Compliance with laws and regulations. The Contractor shall comply with, and shall ensure that its personnel in the designated operational area or supporting the diplomatic or consular mission are familiar with and comply with, all applicable—

(1) United States, host country, and third country national laws;
(2) Treaties and international agreements;
(3) United States regulations, directives, instructions, policies, and procedures; and
(4) Force protection, security, health, or safety orders, directives, and instructions issued by the Chief of Mission or the Combatant Commander; however, only the Contracting Officer is authorized to modify the terms and conditions of the contract.

(e) Preliminary personnel requirements. (1) Specific requirements for paragraphs (e)(2)(i) through (e)(2)(vii) of this clause will be set forth in the statement of work, or elsewhere in the contract.

(2) Before Contractor personnel depart from the United States or a third country, and before Contractor personnel residing in the host country begin contract performance in the designated operational area or supporting the diplomatic or consular mission, the Contractor shall ensure the following:

(i) All required security and background checks are complete and acceptable.

(ii) All personnel are medically and physically fit and have received all required vaccinations.

(iii) All personnel have all necessary passports, visas, entry permits, and other documents required for Contractor personnel to enter and exit the foreign country, including those required for in-transit countries.

(iv) All personnel have received—

(A) A country clearance or special area clearance, if required by the chief of mission; and

(B) Theater clearance, if required by the Combatant Commander.

(v) All personnel have received personal security training. The training must at a minimum—

(A) Cover safety and security issues facing employees overseas;

(B) Identify safety and security contingency planning activities; and

(C) Identify ways to utilize safety and security personnel and other resources appropriately.
(vi) All personnel have received isolated personnel training, if specified in the contract. Isolated personnel are military or civilian personnel separated from their unit or organization in an environment requiring them to survive, evade, or escape while awaiting rescue or recovery.

(vii) All personnel who are U.S. citizens are registered with the U.S. Embassy or Consulate with jurisdiction over the area of operations on-line at http://www.travel.state.gov. The Contractor shall notify all personnel who are not a host country national or ordinarily resident in the host country that—

(i) If this contract is with the Department of Defense, exporters or contractors on the contract relates to supporting the mission of the Department of Defense outside the United States, such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States (see the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3251 et seq.));

(ii) Pursuant to the War Crimes Act, 18 U.S.C. 2441, Federal criminal jurisdiction also extends to conduct that is determined to constitute a war crime when committed by a civilian national of the United States; and

(iii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of United States diplomatic, consular, military or other United States Government missions outside the United States (18 U.S.C. 7(9)).

(f) Processing and departure points. The Contractor shall require its personnel who are arriving from outside the area of performance to perform in the designated operational area or supporting the diplomatic or consular mission to—

(1) Process through the departure center designated in the contract or complete another process as directed by the Contracting Officer;

(2) Use a specific point of departure and transportation mode as directed by the Contracting Officer; and

(3) Process through a reception center as designated by the Contracting Officer upon arrival at the place of performance.

(g) Personnel data. (1) Unless personnel data requirements are otherwise specified in the contract, the Contractor shall establish and maintain with the designated Government official a current list of all Contractor personnel in the areas of performance. The Contracting Officer will inform the Contractor of the Government official designated to receive this data and the appropriate system to use for this effort.

(2) The Contractor shall ensure that all employees on this list have a current record of emergency data, for notification of next of kin, on file with both the Contractor and the designated Government official.

(h) Contractor personnel. The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government’s discretion without prejudice to its rights under any other provision of this contract, including termination for default or cause.

(i) Weapons. (1) If the Contracting Officer, subject to the approval of the Combatant Commander or the Chief of Mission, authorizes the carrying of weapons—

(i) The Contracting Officer may authorize an approved Contractor to issue Contractor-owned weapons and ammunition to specified employees, or;

(ii) The [Contracting Officer to specify individual, e.g., Contracting Officer Representative, Regional Security Officer, etc.] may issue Government-furnished weapons and ammunition to the Contractor for issuance to specified Contractor employees.

(2) The Contractor shall provide to the Contracting Officer a specific list of personnel for whom authorization to carry a weapon is requested.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons—

(i) Are adequately trained to carry and use them—

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander or the Chief of Mission; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922; and

(iii) Adhere to all guidance and orders issued by the Combatant Commander or the Chief of Mission regarding possession, use, safety, and accountability of weapons and ammunition.

(4) Upon revocation by the Contracting Officer of the Contractor’s authorization to possess weapons, the Contractor shall ensure that all Government-furnished weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(5) Whether or not weapons are Government-furnished, all liability for the use of any weapon by Contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.
(j) **Vehicle or equipment licenses.** Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the area of performance.

(k) **Military clothing and protective equipment.** (1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized by the Combatant Commander. If authorized to wear military clothing, Contractor personnel must wear distinctive patches, armbands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures.

(2) Contractor personnel may wear specific items required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(l) **Evacuation.** (1) If the Chief of Mission or Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide to United States and third country national Contractor personnel the level of assistance provided to private United States citizens.

(2) In the event of a non-mandatory evacuation order, the Contractor shall maintain personnel on location sufficient to meet contractual obligations unless instructed to evacuate by the Contracting Officer.

(m) **Personnel recovery.** (1) In the case of isolated, missing, detained, captured or abducted Contractor personnel, the Government will assist in personnel recovery actions.

(2) Personnel recovery may occur through military action, action by non-governmental organizations, other Government-approved action, diplomatic initiatives, or through any combination of these options.

(n) **Notification and return of personal effects.** (1) The Contractor shall be responsible for notification of the employee-designated next of kin, and notification as soon as possible to the U.S. Consul responsible for the area in which the event occurred, if the employee—

(i) Dies;

(ii) Requires evacuation due to an injury; or

(iii) Is isolated, missing, detained, captured, or abducted.

(2) The Contractor shall also be responsible for the return of all personal effects of deceased or missing Contractor personnel, if appropriate, to next of kin.

(o) **Mortuary affairs.** Mortuary affairs for Contractor personnel who die in the area of performance will be handled in accordance with DoD Directive 1300.22, Mortuary Affairs Policy.

2. (i) If this contract was awarded by an agency other than DoD, the Contractor is responsible for the return of the remains of Contractor personnel from the point of identification of the remains to the location specified by the employee or next of kin, as applicable, except as provided in paragraph (o)(2)(i) of this clause.

(ii) In accordance with 18 U.S.C. 1486, the Department of Defense may provide, on a reimbursable basis, mortuary support for the disposition of remains and personal effects of all U.S. citizens upon the request of the Department of State.

(p) **Changes.** In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph shall be subject to the provisions of the Changes clause of this contract.

(q) **Subcontracts.** The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts that require subcontractor personnel to perform outside the United States—

(1) In a designated operational area during—

(i) Contingency operations;

(ii) Humanitarian or peacekeeping operations; or

(iii) Other military operations; or military exercises, when designated by the Combatant Commander; or

(2) When supporting a diplomatic or consular mission—

(i) That has been designated by the Department of State as a danger pay post (see http://aoprals.state.gov/Web920/danger_pay_all.asp); or

(ii) That the Contracting Officer has indicated is subject to this clause.

(End of clause)


As prescribed at 25.1103(d), insert the following provision:

**Prohibition on Conducting Restricted Business Operations in Sudan—Certification (AUG 2009)**

(a) **Definitions.** As used in this provision—

*Business operations* means engaging in commerce in any form, including by acquiring, developing, maintaining, owning, selling,
possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

*Marginalized populations of Sudan* means—

1. Adversely affected groups in regions authorized to receive assistance under section 8(c) of the Darfur Peace and Accountability Act (Pub. L. 109–344) (50 U.S.C. 1701 note); and

2. Marginalized areas in Northern Sudan described in section 4(9) of such Act.

*Restricted business operations* means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110–174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

1. Are conducted under contract directly and exclusively with the regional government of southern Sudan;

2. Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

3. Consist of providing goods or services to marginalized populations of Sudan;

4. Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

5. Consist of providing goods or services that are used only to promote health or education; or

6. Have been voluntarily suspended.

(b) Certification. By submission of its offer, the offeror certifies that the offeror does not conduct any restricted business operations in Sudan.

(End of provision)

[73 FR 33640, June 12, 2008, as amended at 74 FR 40566, Aug. 11, 2009]


As prescribed in 25.1102(e), insert the following clause:

**Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials.**

 required, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act (41 U.S.C. 10a–10d) by providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraph (b)(3) and (b)(4) of this clause.

(3) This requirement does not apply to the construction material or components listed by the Government as follows:

1._PROCESSED INTO A SPECIFIC FORM AND SHAPE;
2. COMBINED WITH OTHER RAW MATERIAL TO CREATE A MATERIAL THAT HAS DIFFERENT PROPERTIES THAN THE PROPERTIES OF THE INDIVIDUAL RAW MATERIALS.
3. ComVisibleed construction material means—

(a) **Domestic construction material** means—

1. An unmanufactured construction material mined or produced in the United States; or

2. A construction material manufactured in the United States.

(b) **Manufactured construction material** means any construction material that is not unmanufactured construction material.

(c) **Steel** means an alloy that includes at least 50 percent iron, between 0.2 and 2 percent carbon, and may include other elements.

(d) **Foreign construction material** means raw material brought to the construction site for incorporation into the building or work that has not been—

1. Processed into a specific form and shape; or

2. Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(e) **Domestic preference** means—

1. Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

2. The Buy American Act (41 U.S.C. 10a–10d) by providing a preference for unmanufactured domestic construction material.

2. **Foreign construction material** means a construction material other than a domestic construction material.
paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable.

(A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the cost of the contract by more than 25 percent;

(B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act or the Buy American Act. (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material is noncompliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American Act.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

<table>
<thead>
<tr>
<th>FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS COST COMPARISON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction material description</td>
</tr>
<tr>
<td>-----------------------------------</td>
</tr>
<tr>
<td>Item 1:</td>
</tr>
<tr>
<td>Foreign construction material</td>
</tr>
<tr>
<td>Domestic construction material</td>
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<tr>
<td>Item 2:</td>
</tr>
<tr>
<td>Foreign construction material</td>
</tr>
<tr>
<td>Domestic construction material</td>
</tr>
</tbody>
</table>

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

*Include all delivery costs to the construction site.]

(End of clause)


As prescribed in 25.102(e), insert the following provision:

(a) Definitions. “Construction material,” “domestic construction material,” “foreign construction material,” “manufactured construction material,” “steel,” and “unmanufactured construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Required Use of Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials.”

(b) Requests for determinations of inapplicability. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) or the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225–21 in the request. If an offeror has not requested a determination regarding the inapplicability of 1605 of the Recovery Act or the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers. (1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—

(i) 25 percent of the offered price of the contract, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable domestic construction material; and

(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.

(2) If two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) Alternate offers. (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225–21, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225–21 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225–21 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

Alternate 1 (Mar 2009). As prescribed in 25.1102(e), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) Requests for determinations of inapplicability. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) or the Buy American Act should submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225–21.

[74 FR 14628, Mar. 31, 2009]

**52.225–23 Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials under Trade Agreements.**

As prescribed in 25.1102(e), insert the following clause:

**Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials under Trade Agreements (Aug 09)**

(a) Definitions. As used in this clause—

Construction material means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single...
Federal Acquisition Regulation

52.225–23

and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Domestic construction material means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States.

Foreign construction material means a construction material other than a domestic construction material.

Free trade agreement (FTA) country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of an FTA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.

Least developed country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

Manufactured construction material means any construction material that is not unmanufactured construction material.

Recovery Act designated country means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);

(2) A Free Trade Agreement country (FTA)(Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Georgia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

Recovery Act designated country construction material means a construction material that is a WTO GPA country construction material, an FTA country construction material, or a least developed country construction material.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

Unmanufactured construction material means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

WTO GPA country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

Steel pipe means steel pipe, the inner and outer diameters, wall thickness, and length of which—

(i) Are determined by the Government of a WTO GPA country; and

(ii) Are equal to or greater than those of the standard sizes, as determined by the Government of a WTO GPA country.

Steel products means—

(i) Steel products other than steel pipe, the inner and outer diameters, wall thickness, and length of which—

(A) Are determined by the Government of a WTO GPA country; and

(B) Are equal to or greater than those of the standard sizes, as determined by the Government of a WTO GPA country;

(ii) Iron—

(A) Is 50 percent iron, between .02 and 2 percent carbon, and may include other elements; and

(B) Is produced in the United States;

(iii)Steel other than steel pipe, the inner and outer diameters, wall thickness, and length of which—

(A) Are determined by the Government of a WTO GPA country; and

(B) Are equal to or greater than those of the standard sizes, as determined by the Government of a WTO GPA country.

Steel mill means a steel mill that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; and

(2) Has a production capacity of 10 or more million long tons per year.

Steel pipe means steel pipe, the inner and outer diameters, wall thickness, and length of which—

(i) Are determined by the Government of a WTO GPA country; and

(ii) Are equal to or greater than those of the standard sizes, as determined by the Government of a WTO GPA country.

Steel products means—

(i) Steel products other than steel pipe, the inner and outer diameters, wall thickness, and length of which—

(A) Are determined by the Government of a WTO GPA country; and

(B) Are equal to or greater than those of the standard sizes, as determined by the Government of a WTO GPA country;

(ii) Iron—

(A) Is 50 percent iron, between .02 and 2 percent carbon, and may include other elements; and

(B) Is produced in the United States;

(iii)Steel other than steel pipe, the inner and outer diameters, wall thickness, and length of which—

(A) Are determined by the Government of a WTO GPA country; and

(B) Are equal to or greater than those of the standard sizes, as determined by the Government of a WTO GPA country.

Steel mill means a steel mill that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; and

(2) Has a production capacity of 10 or more million long tons per year.

Steel pipe means steel pipe, the inner and outer diameters, wall thickness, and length of which—

(i) Are determined by the Government of a WTO GPA country; and

(ii) Are equal to or greater than those of the standard sizes, as determined by the Government of a WTO GPA country.

Steel products means—

(i) Steel products other than steel pipe, the inner and outer diameters, wall thickness, and length of which—

(A) Are determined by the Government of a WTO GPA country; and

(B) Are equal to or greater than those of the standard sizes, as determined by the Government of a WTO GPA country;

(ii) Iron—

(A) Is 50 percent iron, between .02 and 2 percent carbon, and may include other elements; and

(B) Is produced in the United States;

(iii)Steel other than steel pipe, the inner and outer diameters, wall thickness, and length of which—

(A) Are determined by the Government of a WTO GPA country; and

(B) Are equal to or greater than those of the standard sizes, as determined by the Government of a WTO GPA country.

Steel mill means a steel mill that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; and

(2) Has a production capacity of 10 or more million long tons per year.
(4) The Contracting Officer may add other construction material to the list in paragraphs (b)(1) and (b)(2) of this clause if the Government determines that:

(i) The cost of domestic construction material would be unreasonable.

(A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the overall cost of the contract by more than 25 percent;

(B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act to a particular construction material would be inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraphs (b)(1) and (b)(2) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material other than that covered by trade agreements is noncompliant with the applicable Act.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

### FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS COST COMPARISON

<table>
<thead>
<tr>
<th>Construction material description</th>
<th>Unit of measure</th>
<th>Quantity</th>
<th>Cost (dollars)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign construction material</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domestic construction material</td>
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<td>Item 2:</td>
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<tr>
<td>Foreign construction material</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Domestic construction material</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information. Include all delivery costs to the construction site.]

(End of clause)

Alternate I (MAR 2009). As prescribed in 25.1102(e), add the following definition of “Bahrainian, Mexican, or Omani construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

*Bahrainian, Mexican, or Omani construction material* means a construction material that—
(1) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; or
(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Mexico, or Oman into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials. (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, the clause implements—
(i) Section 1605 of the Recovery Act, by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and
(ii) The Buy American Act providing a preference for unmanufactured domestic construction material.
(2) The Contractor shall use only domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(c) Evaluation of offers. (1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—
(i) 25 percent of the offered price of the contract, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable manufactured domestic construction material; and
(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.
(2) If two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) Alternate offers. (1) When an offer includes foreign construction material, other than Recovery Act designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225–23, the offeror also may submit an alternate offer based on use of equivalent domestic or Recovery Act designated country construction material.
(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225–23 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.
(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225–23 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material, and the offeror shall be required to furnish such domestic or Recovery Act designated country construction material. An offer based on
use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (MAR 2009). As prescribed in 25.1102(e), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) Requests for determination of inapplicability. The offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) or the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225–23.

Alternate II (MAR 2009). As prescribed in 25.1102(e), add the definition of “Bahrainian, Mexican, or Omani construction material to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) Alternate offers. (1) When an offer includes foreign construction material, except foreign construction material from a Recovery Act designated country other than Bahrain, Mexico, or Oman that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225–23, the offeror may submit an alternate offer based on use of equivalent domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225–23 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225–23 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

[74 FR 14628, Mar. 31, 2009]
Federal Acquisition Regulation

52.226–3 Disaster or Emergency Area Representation.

As prescribed in 26.205(a), insert the following provision:

**DISASTER OR EMERGENCY AREA REPRESENTATION (NOV 2007)**

(a) Set-aside area. The area covered in this contract is: [Contracting Officer to fill in with definite geographic boundaries.]

(b) Representations. The offeror represents that it does not reside or primarily do business in the set-aside area. (c) An offeror is considered to be residing or primarily doing business in the set-aside area if, during the last twelve months—

(1) The offeror had its main operating office in the area; and
(2) That office generated at least half of the offeror’s gross revenues and employed at least half of the offeror’s permanent employees.

(d) If the offeror does not meet the criteria in paragraph (c) of this provision, factors to be considered in determining whether an offeror resides or primarily does business in the set-aside area include—

(1) Physical location(s) of the offeror’s permanent office(s) and date any office in the set-aside area(s) was established;
(2) Current state licenses;
(3) Record of past work in the set-aside area(s) (e.g., how much and for how long);
(4) Contractual history the offeror has had with subcontractors and/or suppliers in the set-aside area;
(5) Percentage of the offeror’s gross revenues attributable to work performed in the set-aside area;
(6) Number of permanent employees the offeror employs in the set-aside area;
(7) Membership in local and state organizations in the set-aside area; and
(8) Other evidence that establishes the offeror resides or primarily does business in...
52.226–4 Notice of Disaster or Emergency Area Set-Aside.

As prescribed in 26.205(b), insert the following clause:

NOTICE OF DISASTER OR EMERGENCY AREA SET-ASIDE (NOV 2007)

(a) Set-aside area. Offers are solicited only from businesses residing or primarily doing business in [Contracting Officer to fill in with definite geographic boundaries.] Offers received from other businesses shall not be considered.

(b) This set-aside is in addition to any small business set-aside contained in this contract.

(End of clause)

52.226–5 Restrictions on Subcontracting Outside Disaster or Emergency Area.

As prescribed in 26.205(c), insert the following clause:

RESTRICTIONS ON SUBCONTRACTING OUTSIDE DISASTER OR EMERGENCY AREA (NOV 2007)

(a) Definitions. The definitions of the following terms used in this clause are found in the Small Business Administration regulations at 13 CFR 125.6(e):

Cost of the contract, cost of contract performance incurred for personnel, cost of manufacturing, cost of materials, personnel, and subcontracting.

(b) The Contractor agrees that in performance of the contract in the case of a contract for—

(1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the Contractor or employees of other businesses residing or primarily doing business in the set-aside area.

(2) Supplies (other than procurement from a nonmanufacturer of such supplies). The Contractor or employees of other businesses residing or primarily doing business in the set-aside area shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials;

(3) General construction. The Contractor will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area; or

(4) Construction by special trade Contractors. The Contractor will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area.

(End of clause)

52.226–6 Promoting excess food donation to nonprofit organizations.

As prescribed in 26.404, insert the following clause:

PROMOTING EXCESS FOOD DONATION TO NONPROFIT ORGANIZATIONS (MAR 2009)

(a) Definitions. As used in this clause—

Apparent wholesome food means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

Excess food means food that—

(1) Is not required to meet the needs of the executive agencies; and

(2) Would otherwise be discarded.

Food-insecure means inconsistent access to sufficient, safe, and nutritious food.

Nonprofit organization means any organization that is—

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

(b) In accordance with the Federal Food Donation Act of 2008 (Pub. L. 110–247), the Contractor is encouraged, to the maximum extent practicable and safe, to donate excess, apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people in the United States.

(c) Costs.

(1) The Contractor, including any subcontractors, shall assume the responsibility for all the costs and the logistical support to collect, transport, maintain the safety of, or distribute the excess, apparently wholesome food to the nonprofit organization(s) that provides assistance to food-insecure people.
(2) The Contractor will not be reimbursed for any costs incurred or associated with the donation of excess foods. Any costs incurred for excess food donations are unallowable.

(d) Liability. The Government and the Contractor, including any subcontractors, shall be exempt from civil and criminal liability to the extent provided under the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791). Nothing in this clause shall be construed to supersede State or local health regulations (subsection (f) of 42 U.S.C. 1791).

(e) Flowdown. The Contractor shall include this clause in all contracts, task orders, delivery orders, purchase orders, and other similar instruments greater than $25,000 with its subcontractors or suppliers, at any tier, who will perform, under this contract, the provision, service, or sale of food in the United States.

(End of clause)

[74 FR 11832, Mar. 19, 2009]

52.227-1 Authorization and Consent.

As prescribed in 27.201-2(a)(1), insert the following clause:

AUTHORIZATION AND CONSENT (DEC 2007)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent—

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with specifications or written provisions forming a part of this contract or with specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(End of clause)

[74 FR 11832, Mar. 19, 2009]

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.

As prescribed in 27.201-2(b), insert the following clause:

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in the Contractor’s possession pertaining to such claim or suit. Such evidence
and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold.

(End of clause)


52.227–3 Patent Indemnity.

As prescribed in 27.201–2(c)(1), insert the following clause:

PATENT INDEMNITY (APR 1984)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as construction work) under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(End of clause)

Alternate I (APR 1984). As prescribed in 27.201–2(c)(2), add the following paragraph (c) to the basic clause:

(c) This patent indemnification shall not apply to the following items:

[Contracting Officer list and/or identify the items to be excluded from this indemnity]

Alternate II (APR 1984). As prescribed in 27.201–2(c)(2), add the following paragraph (c) to the basic clause:

(c) This patent indemnification shall cover the following items:

[Contracting Officer list and/or identify the items to be included under this indemnity]

Alternate III (JUL 1995). As prescribed in 27.201–2(c)(3), add the following paragraph to the basic clause:

( ) As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over the simplified acquisition threshold issued under this contract and covering those communications services and facilities (1) that are or have been sold or offered for sale by the Contractor to the public, (2) that can be provided over commercially available equipment, or (3) that involve relatively minor modifications.


As prescribed in 27.201–2(d)(1), insert the following clause:

PATENT INDEMNITY—CONSTRUCTION CONTRACTS (DEC 2007)

Except as otherwise provided, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

(End of clause)

Alternate I (DEC 2007). As prescribed in 27.201–2(d)(2), designate the first paragraph of the basic clause as paragraph (a) and add the following paragraph (b) to the basic clause:

(b) This patent indemnification shall not apply to the following items:

[Contracting Officer list and/or identify the items to be excluded from this indemnity]
Federal Acquisition Regulation

[Contracting Officer list the items to be excluded.]

[72 FR 63065, Nov. 7, 2007]

52.227–5 Waiver of Indemnity.

As prescribed in 27.201–2(e), insert the following clause:

WAIVER OF INDEMNITY (APR 1984)

Any provision or clause of this contract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in performing this contract, of any invention covered by the United States patents identified below and waives indemnification by the Contractor with respect to such patents:

Contracting Officer identify the patents by number or by other means if more appropriate

(End of clause)

[49 FR 12987, Mar. 30, 1984, as amended at 72 FR 63066, Nov. 7, 2007]

52.227–6 Royalty Information.

As prescribed in 27.202–5(a)(1), insert the following provision:

ROYALTY INFORMATION (APR 1984)

(a) Cost or charges for royalties. When the response to this solicitation contains costs or charges for royalties totaling more than $250, the following information shall be included in the response relating to each separate item of royalty or license fee:

(1) Name and address of licensor.
(2) Date of license agreement.
(3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable.
(4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable.
(5) Percentage or dollar rate of royalty per unit.
(6) Unit price of contract item.
(7) Number of units.
(b) Copies of current licenses. In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.

(End of provision)

Alternate I (APR 1984). As prescribed in 27.202–5(a)(2), substitute the following for the introductory portion of paragraph (a) of the basic provision:

When the response to this solicitation covers charges for special construction or special assembly that contain costs or charges for royalties totaling more than $250, the following information shall be included in the response relating to each separate item of royalty or license fee:

[49 FR 12987, Mar. 30, 1984, as amended at 72 FR 63066, Nov. 7, 2007]


As prescribed at 27.202–5(b), insert the following provision:

PATENTS—NOTICE OF GOVERNMENT LICENSEE

(End of provision)

[49 FR 12988, Mar. 30, 1984, as amended at 72 FR 63066, Nov. 7, 2007]

52.227–8 [Reserved]

52.227–9 Refund of Royalties.

As prescribed in 27.202–5(c), insert the following clause:

REFUND OF ROYALTIES (APR 1984)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.
(b) The term royalties as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder.
(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.
(d) The Contractor will be compensated for royalties reported under paragraph (c) above,
only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not in fact paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs.

(e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) above, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

(End of clause)

[49 FR 12988, Mar. 30, 1984, as amended at 72 FR 63066, Nov. 7, 2007]

52.227-10 Filing of Patent Applications—Classified Subject Matter.

As prescribed at 27.203-2, insert the following clause:

FILING OF PATENT APPLICATIONS—CLASSIFIED SUBJECT MATTER (DEC 2007)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified Secret or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) Before filing a patent application in the United States disclosing any subject matter classified as Confidential, the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts that cover or are likely to cover classified subject matter.

(End of clause)

[49 FR 12988, Mar. 30, 1984, as amended at 72 FR 63066, Nov. 7, 2007]

52.227-11 Patent Rights—Ownership by the Contractor.

As prescribed in 27.303(b)(1), insert the following clause:

PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (DEC 2007)

(a) As used in this clause—

Invention means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code, or any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.)

Made means—

(1) When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, that the Contractor has at least tentatively determined that the variety has
Nonprofit organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application means to manufacture, in the case of a composition of product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Subject invention means any invention of the Contractor made in the performance of work under this contract.

(b) Contractor’s rights—(1) Ownership. The Contractor may retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.

(2) License. (i) The Contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor’s license extends to any domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part, and includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at contract award. The license is transferable only with the written approval of the agency, except when transferred to the successor of that part of the Contractor’s business to which the invention pertains.

(ii) The Contractor’s license may be revoked or modified by the agency to the extent necessary to achieve expeditions practical application of the subject invention in a particular country in accordance with the procedures in FAR 27.302(1)(2) and 27.304-1(f).

(c) Contractor’s obligations. (1) The Contractor shall disclose in writing each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure shall identify the inventor(s) and this contract under which the subject invention was made. It shall be sufficiently complete in technical detail to convey a clear understanding of the subject invention. The disclosure shall also identify any publication, on sale (i.e., sale or offer for sale), or public use of the subject invention, or whether a manuscript describing the subject invention has been submitted for publication and, if so, whether it has been accepted for publication. In addition, after disclosure to the agency, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the subject invention for publication and any on sale or public use.

(2) The Contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer within 2 years of disclosure to the agency. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file either a provisional or a nonprovisional patent application or a Plant Variety Protection Application on an elected subject invention within 1 year after election. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the Contractor shall file the application prior to the end of that statutory period. If the Contractor files a provisional application, it shall file a nonprovisional application within 10 months of the filing of the provisional application. The Contractor shall file patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) The Contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (c)(2), and (c)(3) of this clause.

(d) Government’s rights—(1) Ownership. The Contractor shall assign to the agency, on written request, title to any subject invention. The Contractor shall file patent applications in additional countries or international patent offices within either 6 months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(1) If the Contractor fails to disclose or elect ownership to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain ownership; provided, that the agency may request title only within 60 days after learning of the Contractor’s failure to disclose or elect within the specified times.

(ii) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause, or if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency,
the Contractor shall continue to retain ownership in that country.

(iii) In any country in which the Contractor decides not to continue the prosecution of any application, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a subject invention,

(g) License. If the Contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.

(i) Contractor action to protect the Government's interest. (1) The Contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to—

(ii) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and

(iii) Assign title to the agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection and plant variety protection for that subject invention in any country.

(2) The Contractor shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in the Contractor's format, each subject invention in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format shall require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Contracting Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) The Contractor shall include, within the specification of any United States nonprovisional patent or plant variety protection application and any patent or plant variety protection certificate issuing thereon covering a subject invention, the following statement: “This invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in the invention.”

(f) Reporting on utilization of subject inventions. The Contractor shall submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts to obtain utilization of the subject invention that are being made by the Contractor or its licensees or assignees. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information as the agency may reasonably specify. The Contractor also shall mark any utilization report as confidential/proprietary to help prevent inadvertent release outside the Government. As required by 35 U.S.C. 202(c)(5), the agency will not disclose that information to persons outside the Government without the Contractor's permission.

(g) Preference for United States industry. Notwithstanding any other provision of this clause, neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for an agreement may be waived by the agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States, or that under the circumstances domestic manufacture is not commercially feasible.

(h) March-in rights. The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), and in accordance with the procedures in 37 CFR 401.5 and any supplemental regulations of the agency in effect on the date of contract award.

(i) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it shall:

(1) Not assign rights to a subject invention in the United States without the written approval of the agency, except where an assignment is made to an organization that has as one of its primary functions the management of inventions, provided, that the assignee shall be subject to the same provisions as the Contractor;
(2) Share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (but through their agency if the agency deems it appropriate), when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10.

(3) Use the balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions for the support of scientific research or education; and

(4) Make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business concerns, and give a preference to a small business concern when licensing a subject invention if the Contractor determines that the small business concern has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business concerns; provided, that the Contractor is also satisfied that the small business concern has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor.

(5) Allow the Secretary of Commerce to review the Contractor’s licensing program and decisions regarding small business applicants, and negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary’s review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of paragraph (i)(4) of this clause.

(j) Communications. [Complete according to agency instructions.]

(k) Subcontracts. (1) The Contractor shall include the substance of this clause, including this paragraph (k), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization.

(2) The Contractor shall include in all other subcontracts for experimental, developmental, or research work the substance of the patent rights clause required by FAR Subpart 27.3.

(3) At all tiers, the patent rights clause must be modified to identify the parties as follows: references to the Government are not changed, and the subcontractor has all rights and obligations of the Contractor in the clause. The Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor’s subject inventions.

(4) In subcontracts, at any tier, the agency, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (h) of this clause.

(End of clause)

Alternate I (JUN 1989). As prescribed in 27.303(b)(3), add the following sentence at the end of paragraph (d)(2) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments, their nationals and international organizations pursuant to the following treaties or international agreements:

Alternate II (DEC 2007). As prescribed in 27.303(b)(4), add the following sentence at the end of paragraph (d)(2) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into by the Government before or after the effective date of the contract and effectuate those license or other rights that are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under the treaties or international agreements with respect to subject inventions made after the date of the amendment.

Alternate III (JUN 1989). As prescribed in 27.303(b)(5), substitute the following paragraph (i)(3) in place of paragraph (i)(3) of the basic clause:

(3) After payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, the balance of any royalties or income earned and retained by the Contractor during any fiscal year on subject inventions under this or any successor contract containing the same requirement, up to any amount equal to 5 percent of the budget of the facility for that fiscal year, shall be used by the Contractor for the scientific research, development, and education consistent with the research and development mission and objectives of the facility.
including activities that increase the licensing potential of other inventions of the facility. If the balance exceeds 5 percent, 75 percent of the excess above 5 percent shall be paid by the Contractor to the Treasury of the United States and the remaining 25 percent shall be used by the Contractor only for the same purposes as described above. To the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by Contractor employees on location at the facility.

Alternate IV (JUN 1989). As prescribed in 27.303(b)(6), include the following paragraph (e)(5) in paragraph (e) of the basic clause:

(5) The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed, and shall submit a description of the procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

Alternate V (DEC 2007). As prescribed in 27.303(b)(7), include the following paragraph (d)(3) in paragraph (d) of the basic clause:

(d)(3) CRADA licensing. If the Contractor performs services at a Government owned and operated laboratory or at a Government owned and Contractor operated laboratory directed by the Government to fulfill the Government’s obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a, the Government may require the Contractor to negotiate an agreement with the CRADA collaborating party or parties regarding the allocation of rights to any subject invention the Contractor makes, solely or jointly, under the CRADA. The agreement shall be negotiated prior to the Contractor undertaking the CRADA work or, with the permission of the Government, upon the identification of a subject invention. In the absence of such an agreement, the Contractor agrees to grant the collaborating party or parties an option for a license in its inventions of the same scope and terms set forth in the CRADA for inventions made by the Government.

[72 FR 63066, Nov. 7, 2007]

52.227-12 [Reserved]


As prescribed at 27.303(e), insert the following clause:


(a) Definitions. As used in this clause—

Invention means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code or any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.)

Made means—

(1) When used in relation to any invention other than a plant variety, means the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, means that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

Practical application, means to manufacture, in the case of a composition or product, to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Subject invention, means any invention of the Contractor made in the performance of work under this contract.

(b) Ownership—(1) Assignment to the Government. The Contractor shall assign to the Government title throughout the world to each subject invention, except to the extent that rights are retained under paragraphs (b)(2) and (d) of this clause.

(2) Greater rights determinations. (i) The Contractor, or an employee-inventor after consultation with the Contractor, may request greater rights than the nonexclusive license provided in paragraph (d) of this clause. The request for a greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the subject invention pursuant to paragraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract normally shall be subject to paragraph (c) of this clause, and to the reservations and conditions deemed to be appropriate by the agency.

(ii) Upon request, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention in any country for which the Contractor has retained title.
Federal Acquisition Regulation

52.227-13

(ii) Upon request, the Contractor shall furnish the agency an irrevocable power to inspect and make copies of the patent application file.

(c) Minimum rights acquired by the Government. (1) Regarding each subject invention to which the Contractor retains ownership, the Contractor agrees as follows:

(i) The Contractor will have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.

(ii) The agency has the right to require licensing pursuant to 35 U.S.C. 263 and 210(c) and in accordance with the procedures set forth in 37 CFR 401.4 and any supplemental regulations of the agency in effect on the date of the contract award.

(iii) Upon request, the Contractor shall submit periodic reports no more frequently than annually on the utilization, or efforts to obtain utilization, of a subject invention by the Contractor or its licensees or assignees. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and any other data and information as the agency may reasonably specify. The Contractor also shall provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is commercial or technical data in the possession of the Contractor pertaining to the Contractor's business to which the subject invention pertains.

(2) The Contractor’s license may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of the subject invention in a particular country in accordance with the procedures in FAR 27.302(i)(2) and 27.304-1(f).

(iii) Upon request, the Contractor shall furnish the Contracting Officer with a description of these procedures for evaluation and for a determination as to their effectiveness.

The Contractor shall disclose in writing each subject invention to the Contracting Officer within 2 months after the invention has been made, but in any event before any on sale (i.e., sale or offer for sale), public use, or publication of the subject invention known to the Contractor. The disclosure shall identify any publication, on sale, or public use of the subject invention and whether a manuscript describing the subject invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding of the subject invention.
has been submitted for publication and, if so, whether it has been accepted for publication.

In addition, after disclosure to the agency, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the subject invention for publication and any on sale or public use.

(d) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or a longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and stating that all subject inventions have been disclosed (or that there are none) and that the procedures required by paragraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were none, and listing all subcontracts at any tier containing a patent rights clause or stating that there were none.

(4) The Contractor shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in the Contractor’s format each subject invention in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government’s rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (e)(2) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(5) Subject to FAR 27.302(i), the Contractor agrees that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(ii) Examination of records relating to inventions. (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by paragraphs (e)(1) and (e)(4) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) The Contractor shall disclose to the Contracting Officer, for the determination of ownership rights, any unreported invention that the Contracting Officer believes may be a subject invention.

(3) Any examination of records under paragraph (f) of this clause will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Withholding of payment. (This paragraph does not apply to subcontracts.) (1) Any time before final payment under this contract, the Contracting Officer may, in the Government’s interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer’s opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(1) of this clause;

(ii) Disclose any subject invention pursuant to paragraph (e)(2) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(3)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (i)(4) of this clause.

(2) The Contracting Officer will withhold the reserve or balance until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) The Contracting Officer will not make final payment under this contract before the Contractor delivers to the Contracting Officer, as required by this clause, all disclosures of subject inventions, an acceptable final report, and all due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized. The Contracting Officer will not withhold any amount under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment shall not be construed as a waiver of any Government rights.

(h) Preference for United States industry. Unless provided otherwise, neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the agency.
Federal Acquisition Regulation

52.227-14

Rights in Data—General

As prescribed in 27.303(e)(5), add the following sentence at the end of paragraph (c)(1)(i) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into by the Government before or after the effective date of this contract, and effectuate those license or other rights that are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under treaties or international agreements with respect to subject inventions made after the date of the amendment.

[72 FR 63068, Nov. 7, 2007]

52.227-14 Rights in Data—General

As prescribed in 27.409(b)(1), insert the following clause with any appropriate alternates:

Rights in Data—General (DEC 2007)

(a) Definitions. As used in this clause—

Computer database or database means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software—(1) Means (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

Computer software documentation means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract

Alternate I

(End of clause)

Alternate II

Alternate I (JUN 1989). As prescribed in 27.303(e)(4), add the following sentence at the end of paragraph (c)(1)(i) of the basic clause:

The license will include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements:

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

Alternate II (DEC 2007). As prescribed in 27.303(e)(5), add the following sentence at the end of paragraph (c)(1)(i) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into by the Government before or after the effective date of this contract, and effectuate those license or other rights that are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under treaties or international agreements with respect to subject inventions made after the date of the amendment.

[72 FR 63068, Nov. 7, 2007]
administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

Restricted computer software means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications.

Technical data, means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 403(6)).

Unlimited rights means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

Allocation of rights. (1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

Copyright—(1) Data first produced in the performance of this contract. (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce,
Federal Acquisition Regulation

52.227-14

prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(b) Data not first produced in the performance of this contract. The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor—

(1) Identifies the data; and

(2) Stops all references to the data and all references to the Government as the original source of the data, and all references to the Government’s possession, custody, or control of the data;

(3) Identifies the data;

(4) Grants to the Government, or acquires on its behalf, license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(c) Removal of copyright notices. The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Release, publication, and use of data. The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except—

(1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

(e) Unauthorized marking of data. (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 253d, the following procedures shall apply prior to canceling or ignoring the markings:

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer’s decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer’s determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent the Government’s action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings. (1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the
52.227–14

Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor’s expense. The Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(b) If data has been marked with an incorrect notice, the Contracting Officer may—

(i) Permit correction of the notice at the Contractor’s expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software. (i) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall—

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data in accordance with the notice:

(End of notice)

Alternate I (DEC 2007). As prescribed in 27.409(b)(2), substitute the following definition for limited rights data in paragraph (a) of the basic clause:

Limited rights data means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Alternate II (DEC 2007). As prescribed in 27.409(b)(3), insert the following paragraph (g)(3) in the basic clause:

(g)(3) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be entitled to be withheld. If delivery of that data is required, the Contractor shall affix the following “Limited Rights Notice” to the data and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

Limited Rights Notice (DEC 2007)

(a) These data are submitted with limited rights under Government Contract No. , if appropriate. These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture or disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any; provided that the Government makes such disclosure subject to prohibition against further use and disclosure: [Agencies may list additional purposes as set forth in 27.404–2(c)(1) or if none, so state.]

(b) This notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate III (DEC 2007). As prescribed in 27.409(b)(4), insert the following paragraph (g)(4) in the basic clause:

(g)(4) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be entitled to be withheld. If delivery of that computer software is required, the Contractor shall affix the following “Restricted Rights Notice” to the computer software and the Government will treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the notice:

Restricted Rights Notice (DEC 2007)

(a) This computer software is submitted with restricted rights under Government.
Contract No. (and subcontract, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) may be transferred;

(2) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors or their subcontractors in accordance with paragraphs (b)(1) through (4) of this notice; and

(6) Used or copied for use with a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is copyrighted computer software, it is licensed to the Government with the minimum rights set forth in paragraph (b) of this notice.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) This notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form notice may be used instead:

RESTRICTED RIGHTS NOTICE SHORT FORM (JUN 1987)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. (name of Contractor and subcontractor, if appropriate) with

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

Alternate IV (DEC 2007). As prescribed in 27.409(b)(5), substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c) Copyright—(1) Data first produced in the performance of the contract. Except as otherwise specifically provided in this contract, the Contractor may assert copyright in any data first produced in the performance of this contract. When asserting copyright, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number), to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public), by or on behalf of the Government.

Alternate V (DEC 2007). As prescribed in 27.409(b)(6), add the following paragraph (j) to the basic clause:

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data deliverables listed as not subject to this paragraph, that the Contracting Officer may, up to three years after acceptance of all deliverables under this contract, inspect at the Contractor’s facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor’s assertion of limited rights or restricted rights status of the data or for evaluating work performance. When the Contractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if a particular representative made the inspection, the Contracting Officer shall designate an alternate inspector.

[72 FR 63068, Nov. 7, 2007]

52.227-15 Representation of Limited Rights Data and Restricted Computer Software.

As prescribed in 27.409(c), insert the following provision:
52.227–16

REPRESENTATION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE (DEC 2007)

(a) This solicitation sets forth the Government’s known delivery requirements for data (as defined in the clause at 52.227–14, Rights in Data—General). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at 52.227–16, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause at 52.227–14 included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data instead. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor’s facility.

(b) By completing the remainder of this paragraph, the offeror represents that it has reviewed the requirements for the delivery of technical data or computer software and states (offeror check appropriate block)—

( ) None of the data proposed for fulfilling the data delivery requirements qualify as limited rights data or restricted computer software; or

( ) Data proposed for fulfilling the data delivery requirements qualify as limited rights data or restricted computer software and are identified as follows:

(c) Any identification of limited rights data or restricted computer software in the offeror’s response is not determinative of the status of the data should a contract be awarded to the offeror.

(End of provision)

[72 FR 63068, Nov. 7, 2007]

52.227–16 Additional Data Requirements.

As prescribed in 27.409(d), insert the following clause:

ADDITIONAL DATA REQUIREMENTS (JUN 1987)

(a) In addition to the data (as defined in the clause at 52.227–14, Rights in Data—General clause or other equivalent included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data—General clause or other equivalent included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Data—General or other equivalent clause of this contract, or data which are specifically identified in this contract as not subject to this clause.

(c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

(End of clause)


52.227–17 Rights in Data—Special Works.

As prescribed in 27.409(e), insert the following clause:

RIGHTS IN DATA—SPECIAL WORKS (DEC 2007)

(a) Definitions. As used in this clause—

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

Unlimited rights means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of Rights. (1) The Government shall have—

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause.

(ii) The right to limit assertion of copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in that data, in accordance with paragraph (c)(1) of this clause.
Federal Acquisition Regulation

52.227-18

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to assert claim to copyright subsisting in data first produced in the performance of this contract.

(c) Copyright—(1) Data first produced in the performance of this contract. (i) The Contractor shall not assert or authorize others to assert any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When copyright is asserted, the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all delivered data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the Contracting Officer shall direct the Contractor to assign (with or without registration), or obtain the assignment of, the copyright to the Government or its designated assignee.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(d) Release and use restrictions. Except as otherwise specifically provided for in this contract, the Contractor shall not use, release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) Indemnity. The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the Contractor’s consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and these provisions do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

[72 FR 63072, Nov. 7, 2007]

52.227-18 Rights in Data—Existing Works.

As prescribed in 27.408(f), insert the following clause:

RIGHTS IN DATA—EXISTING WORKS (DEC 2007)

(a) Except as otherwise provided in this contract, the Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government, for all the material or subject matter called for under this contract, or for which this clause is specifically made applicable.

(b) The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the Contractor’s consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.
52.227–19 Commercial Computer Software License.

As prescribed in 27.409(g), insert the following clause:

COMMERCIAL COMPUTER SOFTWARE LICENSE (DEC 2007)

(a) Notwithstanding any contrary provisions contained in the Contractor's standard commercial license or lease agreement, the Contractor agrees that the Government will have the rights that are set forth in paragraph (b) of this clause to use, duplicate or disclose any commercial computer software delivered under this contract. The terms and provisions of this contract shall comply with Federal laws and the Federal Acquisition Regulation.

(b)(1) The commercial computer software delivered under this contract may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b)(2) of this clause or as expressly stated otherwise in this contract.

(2) The commercial computer software may be—

(i) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) may be transferred;

(ii) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archival) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, commercial computer software shall be subject to same restrictions set forth in this contract;

(v) Disclosed to and reproduced for use by support service Contractors or their subcontractors, subject to the same restrictions set forth in this contract; and

(vi) Used or copied for use with a replacement computer.

(3) If the commercial computer software is otherwise available without disclosure restrictions, the Contractor licenses it to the Government without disclosure restrictions.

(c) The Contractor shall affix a notice substantially as follows to any commercial computer software delivered under this contract:

Notice—Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the Government regarding its use, reproduction and disclosure are as set forth in Government Contract No._________________.

(End of clause)

52.227–20 Rights in Data—SBIR Program.

As prescribed in 27.409(h), insert the following clause:

RIGHTS IN DATA—SBIR PROGRAM (DEC 2007)

(a) Definitions. As used in this clause—

Computer database or database means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software—(1) Means (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

Form, fit, and function data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.
Limited rights data means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

SBIR data means data first produced by a Contractor that is a small business concern in performance of a small business innovation research contract issued under the authority of 15 U.S.C. 638, which data are not generally known, and which data without obligation as to its confidentiality have not been made available to others by the Contractor or are not already available to the Government.

SBIR rights means the rights in SBIR data set forth in the SBIR Rights Notice of paragraph (d) of this clause.

Technical data means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases. (See 41 U.S.C. 403(b).)

Unlimited rights means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of rights. (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this contract as data to be delivered without restriction;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for SBIR data in accordance with paragraph (d) of this clause or for limited rights data or restricted computer software in accordance with paragraph (f) of this clause.

(2) The Contractor shall have the right to—

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Protect SBIR rights in SBIR data delivered under this contract in the manner and to the extent provided in paragraph (d) of this clause;

(iii) Substantiate use of, add, or correct SBIR rights or copyright notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and

(iv) Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (f) of this clause.

(c) Copyright—(1) Data first produced in the performance of this contract. (i) Except as otherwise specifically provided in this contract, the Contractor may assert copyright subsisting in any data first produced in the performance of this contract.

(ii) When asserting copyright, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(iv) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data that are not first produced in the performance of this contract unless the Contractor (i) identifies such data and (ii) grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(3) Removal of copyright notices. The Government will not remove any copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Rights to SBIR data. (1) The Contractor is authorized to affix the following "SBIR Rights Notice" to SBIR data delivered under this contract and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:
SBIR Rights Notice (DEC 2007)

These SBIR data are furnished with SBIR rights under Contract No.____ (and subcontract ______, if appropriate). For a period of 4 years, unless extended in accordance with FAR 27.409(h), after acceptance of all items to be delivered under this contract, the Government will use these data for Government purposes only, and they shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without permission of the Contractor, except that, subject to the foregoing use and disclosure prohibitions, these data may be disclosed for use by support Contractors. After the protection period, the Government has a paid-up license to use, and to authorize others to use on its behalf, these data for Government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This notice shall be affixed to any reproductions of these data, in whole or in part.

(End of notice)

(2) The Government’s sole obligation with respect to any SBIR data shall be as set forth in this paragraph (d).

(e) Omitted or incorrect markings. (1) Data delivered to the Government without any notice authorized by paragraph (d) of this clause shall be deemed to have been furnished with unlimited rights. The Government assumes no liability for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor’s expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;  
(ii) Demonstrates that the omission of the notice was inadvertent;  
(iii) Establishes that the use of the proposed notice is authorized; and  
(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If the data has been marked with an incorrect notice, the Contracting Officer may—

(i) Permit correction of the notice at the Contractor’s expense, if the Contractor identifies the data and demonstrates that the correct notice is authorized, or  
(ii) Correct any incorrect notices.

48 CFR Ch. 1 (10–1–09 Edition)

Scope of clause. The Contractor shall provide, in accordance with 41 U.S.C. 418a (d)(7), the following declaration with respect to all technical data that relate to a major system and that are delivered within 3 years after acceptance of all items (other than technical data) delivered under this contract unless a different period is set forth in the contract. The Contracting Officer may release the Contractor from all or part of the requirements of this clause for specifically identified technical data items at any time during the period covered by this clause.

(b) Technical data declaration. (1) All technical data that are subject to this clause shall be accompanied by the following declaration upon delivery:

Technical Data Declaration (JAN 1997)

The Contractor hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith
Federal Acquisition Regulation

under Government contract No. _____________. (and subcontract ____________, if appropriate) are complete, accurate, and comply with the requirements of the contract concerning such technical data.

(End of declaration)

(2) The Government may, at any time during the period covered by this clause, direct correction of any deficiencies that are not in compliance with contract requirements. The corrections shall be made at the expense of the Contractor. Unauthorized markings on data shall not be considered a deficiency for the purpose of this clause, but will be treated in accordance with paragraph (e) of the Rights in Data—General clause included in this contract.

(c) Technical data revision. The Contractor also shall, at the request of the Contracting Officer, revise technical data that are subject to this clause to reflect engineering design changes made during the performance of this contract affecting the form, fit, and function of any item (other than technical data) delivered under this contract. The Contractor may submit a request for an equitable adjustment to the terms and conditions of this contract for any revisions to technical data made pursuant to this paragraph.

(d) Withholding of payment. (1) At any time before final payment under this contract the Contracting Officer may withhold payment as a reserve up to an amount not exceeding $100,000 or 5 percent of the amount of this contract, whichever is less, if the Contractor fails to—

(i) Make timely delivery of the technical data;

(ii) Provide the declaration required by paragraph (b)(1) of this clause;

(iii) Make the corrections required by paragraph (b)(2) of this clause; or

(iv) Make revisions requested under paragraph (c) of this clause.

(2) The Contracting Officer may withhold the reserve until the Contractor has complied with the direction or requests of the Contracting Officer or determines that the deficiencies relating to delivered data, arose out of causes beyond the control of the Contractor and without the fault or negligence of the Contractor.

(3) The withholding of any reserve under this clause, or the subsequent payment of the reserve, shall not be construed as a waiver of any Government rights.

(End of clause)

52.227–22 Major System—Minimum Rights.

As prescribed in 27.409(k), insert the following clause:

MAJOR SYSTEM—MINIMUM RIGHTS (JUN 1987)

Notwithstanding any other provision of this contract, the Government shall have unlimited rights in any technical data, other than computer software, developed in the performance of this contract and relating to a major system or supplies for a major system procured or to be procured by the Government, to the extent that delivery of such technical data is required as an element of performance under this contract. The rights of the Government under this clause are in addition to and not in lieu of its rights under the other provisions of this contract.

(End of clause)

52.227–23 Rights to Proposal Data (Technical).

As prescribed in 27.409(l), insert the following clause:

RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)

Except for data contained on pages ___, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the Rights in Data—General clause contained in this contract) in and to the technical data contained in the proposal dated ___, upon which this contract is based.

(End of clause)

52.228–1 Bid Guarantee.

As prescribed in 28.101–2, insert a provision or clause substantially as follows:

BID GUARANTEE (SEP 1996)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g., bid bond supported by good and sufficient surety or sureties acceptable to the Government,

(End of clause)

[72 FR 63073, Nov. 7, 2007]
postal money order, certified check, cashier’s check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds, (1) to unsuccessful bidders as soon as practicable after the opening of bids, and (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

(c) The amount of the bid guarantee shall be ______ percent of the bid price or $_______, whichever is less.

(d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

(End of provision)

[61 FR 39213, July 26, 1996]

52.228–2 Additional Bond Security.

As prescribed in 28.106–4(a), insert the following clause:

ADDITIONAL BOND SECURITY (OCT 1997)

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if—

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government;

(b) Any surety fails to furnish reports on its financial condition as required by the Government;

(c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer; or

(d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC’s scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

(End of clause)


52.228–3 Workers’ Compensation Insurance (Defense Base Act).

As prescribed in 28.309(a), insert the following clause:

WORKERS’ COMPENSATION INSURANCE (DEFENSE BASE ACT) (APR 1984)

The Contractor shall (a) provide, before commencing performance under this contract, such workers’ compensation insurance or security as the Defense Base Act (42 U.S.C. 1651 et seq.) requires and (b) continue to maintain it until performance is completed. The Contractor shall insert, in all subcontracts under this contract to which the Defense Base Act applies, a clause similar to this clause (including this sentence) imposing upon those subcontractors this requirement to comply with the Defense Base Act.

(End of clause)


52.228–4 Workers’ Compensation and War-Hazard Insurance Overseas.

As prescribed in 28.309(b), insert the following clause:

WORKERS’ COMPENSATION AND WAR-HAZARD INSURANCE OVERSEAS (APR 1984)

(a) This paragraph applies if the Contractor employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to workers’ compensation insurance under the Defense Base Act (42 U.S.C. 1651 et seq.). On behalf of employees for whom the applicability of the Defense Base Act has been waived, the Contractor shall (1) provide, before commencing performance under this contract, at least that workers’ compensation insurance or the equivalent as the laws of the country of which these employees are nationals may require and (2) continue to maintain it until performance is completed. The Contractor shall insert, in all subcontracts under this contract to which the Defense Base Act would apply but for the waiver, a clause similar to this paragraph (a) (including this sentence) imposing upon those subcontractors this requirement to provide such workers’ compensation insurance coverage.

(b) This paragraph applies if the Contractor or any subcontractor under this contract employs any person who, but for a
Federal Acquisition Regulation

waiver granted by the Secretary of Labor would be subject to the War Hazards Compensation Act (42 U.S.C. 1701 et seq.). On behalf of employees for whom the applicability of the Defense Base Act (and hence that of the War Hazards Compensation Act) has been waived, the Contractor shall, subject to reimbursement as provided elsewhere in this contract, afford the same protection as that provided in the War Hazards Compensation Act, except that the level of benefits shall conform to any law or international agreement controlling the benefits to which the employees may be entitled. In all other respects, the standards of the War Hazards Compensation Act shall apply; e.g., the definition of war-hazard risks (injury, death, capture, or detention as the result of a war hazard as defined in the Act), proof of loss, and exclusion of benefits otherwise covered by workers’ compensation insurance or the equivalent. Unless the Contractor elects to assume directly the liability to subcontractor employees created by this clause, the Contractor shall insert, in all subcontracts under this contract to which the War Hazards Compensation Act would apply but for the waiver, a clause similar to this paragraph (b) (including this sentence) imposing upon those subcontractors this requirement to provide war-hazard benefits.

(End of clause)


52.228-5 Insurance—Work on a Government Installation.

As prescribed in 28.310, insert the following clause:

INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the schedule or elsewhere in the contract.

(b) Before beginning work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government’s interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors’ proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

(End of clause)


52.228-6 [Reserved]

52.228-7 Insurance—Liability to Third Persons.

As prescribed in 28.311-1, insert the following clause:

INSURANCE—LIABILITY TO THIRD PERSONS (MAR 1996)

(a)(1) Except as provided in subparagraph (a)(2) of this clause, the Contractor shall provide and maintain workers’ compensation, employer’s liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers’ compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer’s approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

(c) The Contractor shall be reimbursed—

(1) For that portion (i) of the reasonable cost of insurance allocable to this contract and (ii) required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities must arise out of the performance of this contract or its premises and must result from negligence of the Contractor, or from the willful misconduct of its employees.
52.228-8 Liability and Insurance—Leased Motor Vehicles.

As prescribed in 28.312, insert the following clause:

LIABILITY AND INSURANCE—LEASED MOTOR VEHICLES (MAY 1999)

(a) The Government shall be responsible for loss of or damage to—

(1) Leased vehicles, except for (i) normal wear and tear and (ii) loss or damage caused by the negligence of the Contractor, its agents, or employees;

(2) Property of third persons, or the injury or death of third persons, if the Government is liable for such loss, damage, injury, or death under the Federal Tort Claims Act (28 U.S.C. 2671–2680).

(b) The Contractor shall be liable for, and shall indemnify and hold harmless the Government against, all actions or claims for loss of or damage to property or the injury or death of persons, resulting from the fault, negligence, or wrongful act or omission of the Contractor, its agents, or employees.

(c) The Contractor shall provide and maintain insurance covering its liabilities under paragraph (b) of this clause, in amounts of at least $200,000 per person and $500,000 per occurrence for death or bodily injury and $20,000 per occurrence for property damage or loss.

(d) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the interests of the Government shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after written notice to the Contracting Officer, whichever period is longer. The policies shall exclude any claim by the insurer for subrogation against the Government by reason of any payment under the policies.
Federal Acquisition Regulation

52.228-9 Cargo Insurance.

As prescribed in 28.313(a), insert the following clause:

CARGO INSURANCE (MAY 1999)

(a) The Contractor, at the Contractor’s expense, shall provide and maintain, during the continuance of this contract, cargo insurance of $____ per vehicle to cover the value of property on each vehicle and of $____ to cover the total value of the property in the shipment.

(b) All insurance shall be written on companies acceptable to [insert name of contracting agency], and policies shall include such terms and conditions as required by [insert name of contracting agency].

The Contractor shall provide evidence of acceptable cargo insurance to [insert name of contracting agency] before commencing operations under this contract.

(c) Each cargo insurance policy shall include the following statement:

"It is a condition of this policy that the Company shall furnish—

(1) Written notice to [insert name and address of contracting agency], 30 days in advance of the effective date of any reduction in, or cancellation of, this policy; and

(2) Evidence of any renewal policy to the contracting agency.

[End of clause]

52.228-11 Pledges of Assets.

As prescribed in 28.203-6, insert the following clause:

PLEDGES OF ASSETS (SEPT 2009)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond—

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of—

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form); and/or

(2) A recorded lien on real estate. The offeror will be required to provide—

(i) A mortgagee title insurance policy, in an insurance amount equal to the amount of the lien, or other evidence of title that is consistent with the requirements of Section 2 of the United States Department of Justice Title Standards at http://www.usdoj.gov/enrd/ 2001_Title_Standards.html. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title; and

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of
Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

(End of clause)


52.228–12 Prospective Subcontractor Requests for Bonds.

As prescribed in 28.106–4(b), use the following clause:

PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS (OCT 1995)

In accordance with section 806(a)(3) of Pub. L. 102–190, as amended by sections 2091 and 8105 of Pub. L. 103–355, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requester.

(End of clause)

[60 FR 48274, Sept. 18, 1995]

52.228–13 Alternative Payment Protections.

As prescribed in 28.102–3(b), insert the following clause:

ALTERNATIVE PAYMENT PROTECTIONS (JUL 2000)

(a) The Contractor shall submit one of the following payment protections:

(b) The amount of the payment protection shall be 100 percent of the contract price.

(c) The submission of the payment protection is required within ___ days of contract award.

(d) The payment protection shall provide protection for the full contract performance period plus a one-year period.

(e) Except for escrow agreements and payment bonds, which provide their own protection procedures, the Contracting Officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

(f) When a tripartite escrow agreement is used, the Contractor shall utilize only suppliers of labor and material that signed the escrow agreement.

(End of clause)


52.228–14 Irrevocable Letter of Credit.

As prescribed in 28.204–4, insert the following clause:

IRREVOCABLE LETTER OF CREDIT (DEC 1999)

(a) “Irrevocable letter of credit” (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefore. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and—

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to the Miller Act, the later of—

(A) One year following the expected date of final payment;
B. For performance bonds only, until completion of any warranty period; or
C. For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.
(ii) For contracts not subject to the Miller Act, the later of—
(A) 90 days following final payment; or
(B) For performance bonds only, until completion of any warranty period.
(d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least $25 million in the past year, ILCs over $5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least $25 million in the past year.
(e) The following format shall be used by the issuing financial institution to create an ILC:

ISSUING FINANCIAL INSTITUTION’S LETTERHEAD OR NAME AND ADDRESS
ISSUER’S LETTER OF CREDIT NO.: __________________________
ACCOUNT PARTY’S NAME ______________________________________
ACCOUNT PARTY’S ADDRESS __________________________________
FOR SOLICITATION NO.: __________________________

TO: [U.S. Government agency]
(U.S. Government agency’s address)
1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States $________. This Letter of Credit is payable at [issuing financial institution’s address and, if any, confirming financial institution’s] office at [issuing financial institution’s address and, if any, confirming financial institution’s address] and expires with our close of business on _______, or any automatically extended expiration date.
2. We hereby undertake to honor your or the transferee’s sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.
3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.
4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.
5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of [state of confirming financial institution, if any, otherwise state of issuing financial institution].
6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,
[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

CONFIRMING FINANCIAL INSTITUTION’S LETTERHEAD OR NAME AND ADDRESS
CONFIRMATION NO.: __________________________
BENEFICIARY: ______________________________________
ISSUING FINANCIAL INSTITUTION: __________________________
ISSUING FINANCIAL INSTITUTION’S LC NO.: __________________________

TO: [U.S. Government agency]
(U.S. Government agency’s address)
1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by [name of issuing financial institution] for drawings of up to United States $________ and expiring with our close of business on _______, or any automatically extended expiration date.
2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _______.
3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.
4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:
(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of [state of confirming financial institution].

6. If this confirmation expires during an interruption of business of the confirming financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Confirming financial institution]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

(City, State)

(Date)

[Name and address of financial institution]

Pay to the order of

[Beneficiary Agency]

the sum of United States $

This draft is drawn under Irrevocable Letter of Credit No.

[Beneficiary Agency]

By:

(End of clause)


52.228-15 Performance and Payment Bonds—Construction.

As prescribed in 28.102-3(a), insert a clause substantially as follows:

PERFORMANCE AND PAYMENT BONDS—CONSTRUCTION (NOV 2006)

(a) Definitions. As used in this clause—

Original contract price means the award price of the contract, or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) Amount of required bonds. Unless the resulting contract price is $100,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) Performance bonds (Standard Form 25).

The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) Payment Bonds (Standard Form 25-A).

The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) Additional bond protection. (i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) Furnishing executed bonds. The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) Surety or other security for bonds. The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier’s check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register or may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Highway, Room 6F01, Hyattsville, MD 20782. Or via the internet at http://www.fms.treas.gov/c570.0

(e) Notice of subcontractor waiver of protection (40 U.S.C. 3133(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of clause)

Federal Acquisition Regulation

52.228-16 Performance and Payment Bonds—Other Than Construction.

As prescribed in 28.103-4, insert a clause substantially as follows:

PERFORMANCE AND PAYMENT BONDS—OTHER THAN CONSTRUCTION (NOV 2006)

(a) Definitions. As used in this clause—

Original contract price means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection of the Government in an amount equal to ______ percent of the original contract price and a payment bond (Standard Form 1416) in an amount equal to ______ percent of the original contract price.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within ______ days, but in any event, before starting work.

(d) The Government may require additional performance and payment bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bonds or to obtain additional bonds.

(e) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier’s check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States, Treasury Circular 570 is published in the Federal Register, or may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 5700 East West Highway, Room 6F01, Hyattsville, MD 20782. Or via the internet at http://www.fms.treas.gov/c570/.

(End of clause)

Alternate I (JUL 2006). As prescribed in 28.103-4, substitute the following paragraphs (b) and (d) for paragraphs (b) and (d) of the basic clause:

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection to the Government in an amount equal to ______ percent of the original contract price.

(d) The Government may require additional performance bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.


52.229-1 State and Local Taxes.

As prescribed in 29.401-1, insert the following clause:

STATE AND LOCAL TAXES (APR 1984)

Notwithstanding the terms of the Federal, State, and Local Taxes clause, the contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The Contractor shall state separately on its invoices the amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption.

(End of clause)


52.229-2 North Carolina State and Local Sales and Use Tax.

As prescribed in 29.401-2, insert the following clause in solicitations and contracts for construction to be performed in North Carolina:

NORTH CAROLINA STATE AND LOCAL SALES AND USE TAX (APR 1984)

(a) Materials, as used in this clause, means building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired under this contract.

(b) If this is a fixed-price contract, the contract price includes North Carolina State and local sales and use taxes to be paid on materials, notwithstanding any other provision of this contract. If this is a cost-reimbursement contract, any North Carolina State and local sales and use taxes paid by the Contractor on materials shall constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) below, the Contractor shall furnish the Contracting Officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina State and local sales and use taxes

(End of clause)

paid. In the event the Contractor makes several purchases from the same vendor, the certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the North Carolina State and local sales and use taxes paid. The statement shall also include the cost of any tangible personal property withdrawn from the Contractor’s warehouse stock and the amount of North Carolina State and local sales or use tax paid on this property by the Contractor. Any local sales or use taxes included in the Contractor’s statements must be shown separately from the State sales or use taxes. The Contractor shall furnish any additional information the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim for sales or use taxes. The Contractor shall also obtain and furnish to the Contracting Officer similar certified statements by its subcontractors.

(d) If this contract is completed before the next October 1, the certified statements to be furnished pursuant to paragraph (c) above shall be submitted within 60 days after completion. If this contract is not completed before the next October 1, the certified statements shall be submitted on or before November 30 of each year and shall cover taxes paid during the 12-month period that ended the preceding September 30.

(e) The certified statements to be furnished pursuant to paragraph (c) above shall be in the following form:

I hereby certify that during the period ______ to ______ [insert dates], ______ [insert name of Contractor or subcontractor] paid North Carolina State and local sales and use taxes aggregating $____ (State) and $____ (local), with respect to building materials, supplies, fixtures, and equipment that have become a part of or are annexed to any vessel, structure, or equipment that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(End of clause)

Alternate I (APR 1984). If the requirement is for vessel repair to be performed in North Carolina, substitute the following paragraph (a) of the basic clause:

(a) Materials, as used in this clause, means materials, supplies, fixtures, and equipment that become a part of or are annexed to any vessel altered or repaired under this contract.


52.229–3 Federal, State, and Local Taxes.

As prescribed in 29.401–3, insert the following clause:

FEDERAL, STATE, AND LOCAL TAXES (APR 2003)

(a) As used in this clause—

After-imposed Federal tax means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

After-relieved Federal tax means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

All applicable Federal, State, and local taxes and duties means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

Contract date means the date set for bid opening or, if this is a negotiated contract or modification, the effective date of this contract or modification.

Local taxes includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.
Federal Acquisition Regulation

52.229-4 Federal, State, and Local Taxes (State and Local Adjustments).

As prescribed in 29.401–3, insert the following clause:

FEDERAL, STATE, AND LOCAL TAXES (STATE AND LOCAL ADJUSTMENTS) (APR 2003)

(a) As used in this clause—

After-imposed tax means any new or increased Federal, State, or local tax or duty, other than an excepted tax, that was excluded on the contract date but whose exclusion was later revoked or amount of exemption reduced during the contract period, other than an excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

After-relieved tax means any amount of Federal, State, or local tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

All applicable Federal, State, and local taxes and duties means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

Contract date means the effective date of this contract and, for any modification to this contract, the effective date of the modification.

Excepted tax means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. Excepted tax does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor’s possession of, interest in, or use of property, title to which is in the Government.

Local taxes includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b) Unless otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed tax, or of any tax or duty specifically excluded from the contract price by a term or condition of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor’s fault, negligence, or failure to follow instructions of the Contracting Officer.

(d) The contract price shall be decreased by the amount of any after-relieved tax. The Government shall be entitled to repayment of any penalty refunded to the Contractor to the extent that such interest was earned after the Contractor was paid by the Government for such taxes. The Government shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(e) The contract price shall be decreased by the amount of any Federal, State, or local tax, other than an excepted tax, that was included in the contract price and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor’s fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)
52.229-5

contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys’ fees.

(b) The Government shall furnish evidence appropriate to establish exemption from any Federal, State, or local tax when (1) the Contractor requests such exemption and states in writing that it applies to a tax excluded from the contract price and (2) a reasonable basis exists to sustain the exemption.

(End of clause)


52.229-6 [Reserved]

52.229-6 Taxes—Foreign Fixed-Price Contracts.

As prescribed in 28.402–1(a), insert the following clause:

TAXES—FOREIGN FIXED-PRICE CONTRACTS (JUN 2003)

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States and its outlying areas, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) Definitions. As used in this clause:

Contract date means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

Country concerned means any country, other than the United States and its outlying areas, in which expenditures under this contract are made.

Tax and taxes include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

All applicable taxes and duties means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

After-imposed tax means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taken effect after the contract date.

After-relieved tax means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

Excepted tax means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. Excepted tax does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor’s possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(d) The contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor’s fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (I) below.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor’s fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (1) below.

48 CFR Ch. 1 (10–1–09 Edition)
(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $250.00.

(h) If the Contractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government is exempt by agreement with the Government of the United States and of the country concerned, or any tax or duty included in the contract price that the Contractor or any subcontractor under this contract are exempt under the laws of the United States, or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Contractor shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys’ fees.

(End of clause)


52.229-8 Taxes—Foreign Cost-Reimbursement Contracts.

As prescribed in 29.402-2(a), insert the following clause:

TAXES—FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990)

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of __________ (insert name of country), or from which the Contractor or any subcontractor under this contract is exempt under the laws of __________ (insert name of country), shall not constitute an allowable cost under this contract.

(b) If the Contractor or subcontractor under this contract obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S.C.) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid or credited at the time of such offset to the Government of the United States as the Contracting Officer directs.

(End of clause)


52.229-9 Taxes—Cost-Reimbursement Contracts With Foreign Governments.

As prescribed in 29.402-2(b), insert the following clause:

TAXES—COST-REIMBURSEMENT CONTRACTS WITH FOREIGN GOVERNMENTS (MAR 1990)

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of __________ (insert name of country), or any tax or duty not applicable to this contract or any subcontracts under this contract, pursuant to the laws of __________ (insert name of country). If any such tax or duty has been included in the contract price, through error or otherwise, the contract price shall be correspondingly reduced.

(End of clause)
the foreign government), or from which any subcontractor under this contract is exempt under the laws of [insert name of country], shall not constitute an allowable cost under this contract.

(b) If any subcontractor obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S.C.) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid (not credited to the contract) to the Treasurer of the United States at the time the Federal income tax return is filed.

(End of clause)


52.229–10 State of New Mexico Gross Receipts and Compensating Tax.  
As prescribed in 29.401–4(b), insert the following clause:

STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX (APR 2003)

(a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the contract number.

(b) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Allowable Cost and Payment clause of this contract except as provided in paragraph (d) of this clause.

(c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR–3C, to the State of New Mexico Taxation and Revenue Department, Revenue Division, P.O. Box 630, Santa Fe, New Mexico 87509. When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the (*) and the New Mexico Taxation and Revenue Department.

(d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor’s liability for the gross receipts tax and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.

(e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.

(f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the Contractor only if such property is not used for Federal purposes.

(g) The (*) may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the (*), may participate in any matters or proceedings pertaining to this clause or the above-mentioned agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the (*) to represent its Contractor.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401–4(b) (1) through (3) of the Federal Acquisition Regulation, 48 CFR part 29.

(i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

(*Insert appropriate agency name in blanks.)

(End of clause)


52.230–1 Cost Accounting Standards Notices and Certification.  
As prescribed in 30.201–3, insert the following provisions:

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (OCT 2008)

NOTE: This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS)
Federal Acquisition Regulation

52.230–1

requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201–2(c)(5) or 9903.201–2(c)(6), respectively.

I. Disclosure Statement—Cost Accounting Practices and Certification

(a) Any contract in excess of $500,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201–1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror’s proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

CAUTION: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement. The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable, and (ii) one copy to the cognizant Federal auditor. (Disclosure must be on Form No. CASB DS–1 or CASB DS–2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement:

Name and Address of Cognizant ACO or Federal Official Where Filed:

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) Certificate of Previously Submitted Disclosure Statement. The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement:

Name and Address of Cognizant ACO or Federal Official Where Filed:

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

☐ (3) Certificate of Monetary Exemption. The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling $50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

☐ (4) Certificate of Interim Exemption. The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202–1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under subparagraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

CAUTION: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of $50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. Cost Accounting Standards—Eligibility for Modified Contract Coverage

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201–2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below
shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201–2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than $50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

CAUTION: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of $50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of $50 million or more.

III. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐ Yes ☐ No

(End of provision)

Alternate I (APR 1996). As prescribed in 30.201–3(b), add the following subparagraph (c)(5) to Part I of the basic provision:

☐ (5) Certificate of Disclosure Statement Due Date by Educational Institution. If the offeror is an educational institution that, under the transition provisions of 48 CFR 9903.202–1(f), is or will be required to submit a Disclosure Statement after receipt of this award, the offeror hereby certifies that (check one and complete):

☐ (i) A Disclosure Statement Filing Due Date of has been established with the cognizant Federal agency.

☐ (ii) The Disclosure Statement will be submitted within the 6-month period ending ___ months after receipt of this award.

Name and Address of Cognizant ACO or Federal Official Where Disclosure Statement is to be Filed:
of applicability to such contract or subcontract.

4(a)(2) If the parties fail to agree whether the change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

4(a)(3) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

5. Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

6. If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR part 9904 or a CAS rule or regulation in 48 CFR part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

7. The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

8. The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor’s award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor’s signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201–4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of $650,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201–1.

(End of clause)


As prescribed in 30.201–4(b)(1), insert the following clause:

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (OCT 2008)

(a) The Contractor, in connection with this contract, shall—


2. (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202–1 through 9903.202–5, if the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(b) If the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to,
(End of clause)

52.230–5 Cost Accounting Standards—Educational Institution.

As prescribed in 30.201–4(e), insert the following clause:

**Cost Accounting Standards—Educational Institution (OCT 2008)**

(a) Unless the contract is exempt under 48 CFR 9903.201–1 and 9903.201–2, the provisions of 48 CFR part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—

1. (CAS-covered contracts only). If a business unit of an educational institution required to submit a Disclosure Statement,
Federal Acquisition Regulation

52.230-5

requirement to disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9902.302-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis for accumulating and allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and be applied prospectively to contracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting practice change mandated under Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions, requires that a change in the Contractor's cost accounting practices be made after the date of contract award, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If the contract price is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereon contained in 48 CFR part 9905 in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Government shall have access to the Contractor's CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is materially affected by a change made under this provision that will increase costs paid by the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 48 CFR part 9903, and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or, if the subcontractor has submitted cost or pricing data, on the date
of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

1. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201–4 shall be inserted;

2. This requirement shall apply only to negotiated subcontracts in excess of $650,000; and

3. The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201–1.

(END OF CLAUSE)


52.230–6 Administration of Cost Accounting Standards.

As prescribed in 30.201–4(d)(1), insert the following clause:

**Administrative of Cost Accounting Standards (MAR 2008)**

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

(a) **Definitions.** As used in this clause—

Affected CAS-covered contract or subcontract—means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor—

1. Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

2. Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

Cognizant Federal agency official (CFAO)—means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.

Desirable change—means a compliant change to a Contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

Fixed-price contracts and subcontracts—means—

1. Fixed-price contracts and subcontracts described at FAR 16.202, 16.203, except when price adjustments are based on actual costs of labor or material, described at 16.203–1(a)(2), and 16.207;

2. Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR Subpart 16.4);

3. Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR Subpart 16.5); and

4. The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR Subpart 16.6).

**Flexibly-priced contracts and subcontracts means—**


2. Cost-reimbursement contracts and subcontracts (FAR Subpart 16.3);

3. Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR Subpart 16.4);

4. Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR Subpart 16.5); and

5. The materials portion of time-and-materials contracts and subcontracts (FAR Subpart 16.6).

**Noncompliance** means a failure in estimating, accumulating, or reporting costs to—

1. Comply with applicable CAS; or

2. Consistently follow disclosed or established cost accounting practices.

**Required change means—**

1. A change in cost accounting practice that a Contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

2. A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

**Unilateral change** means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

(b) Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement, if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without
submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR 52.230-2, Cost Accounting Standards—Educational Institutions; or paragraph (a)(2) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; or paragraph (a)(2) of the clause at FAR 52.230-5, Cost Accounting Standards—Educational Institution.

(1) When a description has been submitted for a change in cost accounting practice that is dependent on a contact award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.

(2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR 52.230-2; or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR 52.230-5; submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.

(3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(i) or (iii) of the clauses at FAR 52.230-2 and FAR 52.230-5, or with paragraph (a)(3) of the clause at FAR 52.230-3, submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.

(4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR 52.230-2 and FAR 52.230-5; or by paragraph (a)(4) of the clause at FAR 52.230-3)—

(i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or

(ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.

(c) When requested by the CFAO, submit on or before a date specified by the CFAO—

(1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause. The Contractor may submit a detailed cost-impact (DCI) proposal in lieu of the requested GDM proposal provided the DCI proposal is in accordance with paragraph (e) or (h) of this clause;

(2) A detailed cost-impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;

(3) For any request for a desirable change that is based on the criteria in FAR 30.603-2(b)(3)(i), the data necessary to demonstrate the required cost savings; and

(4) For any request for a desirable change that is based on criteria other than that in FAR 30.603-2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.

(d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall—

(1) Calculate the cost impact in accordance with paragraph (f) of this clause;

(2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:

(a) A representative sample of affected CAS-covered contracts and subcontracts.

(b) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(c) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts;

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The estimated increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall—

(1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;

(2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include—

(i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and

(ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts,
using the results in paragraph (e)(2)(i) of this clause;

(ii) Estimated decreased cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits for each of the following groups:
(A) Fixed-price contracts and subcontracts.
(B) Flexibly-priced contracts and subcontracts.

(3) For unilateral changes—
(i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:
(A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government;
(B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

(ii) Determine the increased or decreased cost to the Government for fixed-priced contracts and subcontracts as follows:
(A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government;
(B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

(iii) Calculate the total increase or decrease in contract and subcontract price and cost accumulations for each affected CAS-covered contract and subcontract as follows:
(A) Fixed-price contracts and subcontracts.
(B) Flexibly-priced contracts and subcontracts.

(h)(2)(i) of this clause.

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(5) For GDM and DCI proposals that are subject to the requirements of paragraph (d) or (e) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (i.e., open or closed) or the fiscal year in which the costs were incurred (i.e., whether or not the final indirect rates have been established).

(2) For unilateral changes—

(i) Include only those affected CAS-covered contracts and subcontracts having—
(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and
(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:
(i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:
(A) Fixed-price contracts and subcontracts.
(B) Flexibly-priced contracts and subcontracts.

(ii) The increased or decreased cost to the Government for each of the following groups:
(A) Fixed-price contracts and subcontracts.
(B) Flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease.

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(ii) The increased or decreased cost to the Government for each of the following groups:

(iii) Any other method that provides a reasonable approximation of the total increase or decrease.

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(ii) The increased or decreased cost to the Government for each of the following groups:

(iii) Any other method that provides a reasonable approximation of the total increase or decrease.

(3) Use a format acceptable to the CFAO that, as a minimum, include the information in paragraph (g)(3) of this clause.
Federal Acquisition Regulation


As prescribed in 30.201–3(c), insert the following provision:

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.
   (i) For GDm and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:
   (1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (i.e., open or closed) or the fiscal year in which the costs are incurred (i.e., whether or not the final indirect rates have been established).
   (2) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:
      (i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.
      (ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.
   (3) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:
      (i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.
      (ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.
   (4) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.
   (5) Calculate the increased cost to the Government in the aggregate.
   (i) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:
      (1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor’s affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact), until such time as the Contractor provides the required information to the CFAO.
      (2) Issue a final decision in accordance with FAR 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.
   (k) Agree to——
      (1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR 52.230–2 and 52.230–5; or with paragraph (a)(3)(i) or (a)(4) of the clause at FAR 52.230–3; and
      (2) Repay the Government for any aggregate increased cost paid to the Contractor.
   (1) For all subcontracts subject to the clauses at FAR 52.230–2, 52.230–3, or 52.230–5—
      (1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);
      (2) Include the substance of this clause in all negotiated subcontracts; and
      (3) Within 30 days after award of the subcontract, submit the following information to the Contractor’s CFAO:
         (i) Subcontractor’s name and subcontract number.
         (ii) Dollar amount and date of award.
         (iii) Name of Contractor making the award.
   (m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall—
      (1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and
      (2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.
   (n) For subcontracts containing the clause or substance of the clause at FAR 52.230–2, FAR 52.230–3, or FAR 52.230–5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor’s signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)
52.231 Proposal Disclosure—Cost Accounting Practice Changes (APR 2005)

The offeror shall check “yes” below if the contract award will result in a required or unilateral change in cost accounting practice, including unilateral changes requested to be desirable changes.

Yes No

If the offeror checked “Yes” above, the offeror shall—

(1) Prepare the price proposal in response to the solicitation using the changed practice for the period of performance for which the practice will be used; and

(2) Submit a description of the changed cost accounting practice to the Contracting Officer and the Cognizant Federal Agency Official as pricing support for the proposal.

(End of provision)

[70 FR 11761, Mar. 9, 2005]

52.231 [Reserved]

52.232–1 Payments.

As prescribed in 32.111(a)(1), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a fixed-price supply contract, a fixed-price service contract, or a contract for nonregulated communication services is contemplated:

PAYMENTS (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if—

(a) The amount due on the deliveries warrants it; or
(b) The Contractor requests it and the amount due on the deliveries is at least $1,000 or 50 percent of the total contract price.

(End of clause)


52.232–2 Payments Under Fixed-Price Research and Development Contracts.

As prescribed in 32.111(a)(2), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a fixed-price research and development contract is contemplated:

PAYMENTS UNDER FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS (APR 1984)

The Government shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for work delivered or rendered and accepted, less any deductions provided in this contract. Unless otherwise specified, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

(End of clause)

52.232–3 Payments Under Personal Services Contracts.

As prescribed in 32.111(a)(3), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for personal services:

PAYMENTS UNDER PERSONAL SERVICES CONTRACTS (APR 1984)

The Government shall pay the Contractor for the services performed by the Contractor, as set forth in the Schedule of this contract, at the rates prescribed, upon the submission by the Contractor of proper invoices or time statements to the office or officer designated and at the time provided for in this contract.

The Government shall also pay the Contractor (a) a per diem rate in lieu of subsistence for each day the Contractor is in a travel status away from home or regular place of employment in accordance with Federal Travel Regulations (41 CFR 101–7) as authorized in appropriate Travel Orders; and (b) any other transportation expenses if provided for in the Schedule.

(End of clause)

52.232–4 Payments Under Transportation Contracts and Transportation-Related Services Contracts.

As prescribed in 32.111(a)(4), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for transportation or transportation-related services:
Federal Acquisition Regulation

52.232–5 Payments Under Fixed-Price Construction Contracts.

As prescribed in 32.111(a)(5), insert the following clause:

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (SEP 2002)

(a) Payment of price. The Government shall pay the Contractor the contract price as provided in this contract.

(b) Progress payments. The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meet the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if—

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.

I hereby certify, to the best of my knowledge and belief, that—

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

(Name)

(Date)
complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(i) Title, liability, and reservation of rights. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as—

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) Reimbursement for bond premiums. In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) above shall not apply to that portion of progress payments attributable to bond premiums.

(h) Final payment. The Government shall pay the amount due the Contractor under this contract after—

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor’s claim to amounts payable hereunder has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) Limitation because of undefinitized work. Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A contract action is any action resulting in a contract, as defined in FAR subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) Interest computation on unearned amounts. In accordance with 31 U.S.C. 1503(c)(1), the amount payable under subparagraph (d)(2) of this clause shall be—

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.


As prescribed in 32.111(a)(6), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for regulated communication services by common carriers:

PAYMENT UNDER COMMUNICATION SERVICE CONTRACTS WITH COMMON CARRIERS (APR 1984)

The Government shall pay the Contractor, in arrears, upon submission of invoices for services and facilities furnished in accordance with the terms of CSAs issued under this contract, the rates and charges for the services and facilities as set forth in the clause entitled Rates, Charges and Services.


As prescribed in 32.111(a)(7), insert the following clause:

PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (FEB 2007)

The Government will pay the Contractor as follows upon the submission of vouchers approved by the Contracting Officer or the authorized representative:

(a) Hourly rate. (1) Hourly rate means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—

(i) Performed by the Contractor;
Federal Acquisition Regulation

52.232-7

(ii) Performed by the subcontractors; or
(iii) Transferred between divisions, subsidiaries, or affiliates of the Contractor under a common control.

The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed.

The hourly rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by employees that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

The hourly rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis.

Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or authorized representative. The Contractor shall substantiate vouchers (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment and by—

(i) Individual daily job timekeeping records;
(ii) Records that verify the employees meet the qualifications for the labor categories specified in the contract; or
(iii) Other substantiation approved by the Contracting Officer.

Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the terms of paragraph (e) of this clause, pay the voucher as approved by the Contracting Officer or authorized representative.

Unless otherwise prescribed in the Schedule, the Contracting Officer may unilaterally issue a contract modification requiring the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government’s interests. The Contracting Officer may require a withhold of 5 percent of the amounts due under paragraph (a) of this clause, but the total amount withheld for the contract shall not exceed $50,000. The amounts withheld shall be retained until the Contractor executes and delivers the release required by paragraph (g) of this clause.

Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

Materials. (1) For the purposes of this clause—

(i) Direct materials means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) Materials means—

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the Contractor under a common control;

(B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(C) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and

(D) Applicable indirect costs.

(2) If the Contractor furnishes its own materials that meet the definition of a commercial item at 2.101, the price to be paid for such materials shall not exceed the Contractor’s established catalog or market price, adjusted to reflect the—

(i) Quantities being acquired; and

(ii) Actual cost of any modifications necessary because of contract requirements.

(3) Except as provided for in paragraph (b)(2) of this clause, the Government will reimburse the Contractor for allowable cost of materials provided the Contractor—

(i) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(ii) Ordinarily makes these payments within 30 days of the submission of the Contractor’s payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.

(4) Payment for materials is subject to the Allowable Cost and Payment clause of this contract. The Contracting Officer will determine allowable costs of materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(5) The Contractor may include allocable indirect costs and other direct costs to the extent they are—

(i) Comprised only of costs that are clearly excluded from the hourly rate;

(ii) Allocated in accordance with the Contractor’s written or established accounting practices; and

(iii) Indirect costs are not applied to subcontracts that are paid at the hourly rates.

257
(6) To the extent able, the Contractor shall—
   (i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
   (ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. The Contractor shall give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government.

(7) Except as provided for in 52.205-26(e) and (f), the Government will not pay profit or fee to the prime Contractor on materials.

(c) If the Contractor enters into any subcontract that requires consent under the clause at 52.244-2, Subcontracts, without obtaining such consent, the Government is not required to reimburse the Contractor for any costs incurred under the subcontract prior to the date the Contractor obtains the required consent. Any reimbursement of subcontract costs incurred prior to the date the consent was obtained shall be at the sole discretion of the Government.

(d) Total cost. It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule, and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 55 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total cost to the Government for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total cost to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total cost for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(e) Ceiling price. The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(f) Audit. At any time before final payment under this contract, the Contracting Officer may request audit of the vouchers and supporting documentation. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding vouchers, that are found by the Contracting Officer or authorized representative not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher designated by the Contractor as the “completion voucher” and supporting documentation, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of paragraph (g) of this clause), the Government shall promptly pay any balance due the Contractor. The completion voucher, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(g) Assignment and Release of Claims. The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(1) Specified claims in stated amounts, or
(2) Claims in estimated amounts if the amounts are not
susceptible of exact statement by the Contractor.

(2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(h) Interim payments on contracts for other than services. (1) Interim payments made prior to the final payment under the contract are contract financing payments. Contract financing payments are not subject to the interest penalty provisions of the PromptPayment Act.

(2) The designated payment office will make interim payments for contract financing payments on the [Contracting Officer insert day as prescribed by agency head; if not prescribed, insert “20th”] day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(i) Interim payments on contracts for services. For interim payments made prior to the final payment under this contract, the Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3905) and prompt payment regulations at 5 CFR part 1315.

(End of Clause)

Alternate I (FEB 2007). If a labor-hour contract is contemplated, the Contracting Officer shall add the following paragraph (j) to the basic clause:

(j) The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.


52.232-8 Discounts for Prompt Payment.

As prescribed in 32.111(b)(1), insert the following clause:

Discounts for Prompt Payment (FEB 2002)

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

(End of clause)


52.232-9 Limitation on Withholding of Payments.

As prescribed in 32.111(b)(2), insert a clause substantially as follows, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a supply contract, service contract, time-and-materials contract, labor-hour contract, or research and development contract is contemplated that includes two or more terms authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed:

LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed...

As prescribed in 32.111(c)(1), insert the following clause:

PAYMENTS UNDER FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (AUG 1987)

(a) Estimates shall be made monthly of the amount and value of the work accomplished and services performed by the Contractor under this contract which meet standards of quality established under this contract. The estimates shall be prepared by the Contractor and accompanied by any supporting data required by the Contracting Officer.

(b) Upon approval of the estimate by the Contracting Officer, payment upon properly executed vouchers shall be made to the Contractor, as soon as practicable, of 90 percent of the approved amount, less all previous payments; provided, that payment may be made in full during any months in which the Contracting Officer determines that performance has been satisfactory. Also, whenever the Contracting Officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the Government, the Contracting Officer may release the excess amount to the Contractor.

(c) Upon satisfactory completion by the Contracting Officer of the work done by the Contractor under the Statement of Architect-Engineer Services, the Contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work. Upon satisfactory completion and final acceptance of the construction work, the Contractor shall be paid any unpaid balance of money due under this contract.

(d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than any claims that are specifically excepted by this contract, and specifically paragraph (b) of this clause, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A contract action is any action resulting in a contract, as defined in FAR subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

52.232–11 Extras.

As prescribed in 32.111(c)(2), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a fixed-price supply contract, fixed-price service contract, or transportation contract is contemplated:

EXTRAS (APR 1984)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

(End of clause)

52.232–12 Advance Payments.

As prescribed in 32.412(a), insert the following clause:

ADVANCE PAYMENTS (MAY 2001)

(a) Requirements for payment. Advance payments will be made under this contract (1) upon submission of properly certified invoices or vouchers by the Contractor, and approval by the administering office, [Insert the name of the office designated under agency procedures], or (2) under a letter of credit. The amount of the invoice or voucher submitted plus all advance payments previously approved shall not exceed $____. If a
Federal Acquisition Regulation

52.232-12

Letter of credit is used, the Contractor shall withdraw cash only when needed for disbursements acceptable under this contract and report cash disbursements and balances as directed by the Contracting Officer. The Contractor shall apply terms similar to this clause to any advance payments to subcontractors.

(b) Special account. Until (1) the Contractor has liquidated all advance payments made under the contract and related interest charges and (2) the administering office has approved in writing the release of any funds due and payable to the Contractor, all advance payments and other payments under this contract shall be made by check payable to the Contractor marked for deposit only in the Contractor’s special account with the financial institution designated in writing by the Contracting Officer.

(c) Use of funds. The Contractor may withdraw funds from the special account only to pay for properly allocable, allowable, and reasonable direct materials, direct labor, and indirect costs. Other withdrawals require approval in writing by the administering office. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of part 31 of the Federal Acquisition Regulation.

(d) Repayment to the Government. At any time, the Contractor may repay all or any part of the funds advanced by the Government. Whenever requested in writing to do so by the administering office, the Contractor shall repay to the Government any part of the unliquidated advance payments considered by the administering office to exceed the Contractor’s current requirements or the amount specified in paragraph (a) above. If the Contractor fails to repay the amount requested by the administering office, all or any part of the unliquidated advance payments may be withdrawn from the special account by check signed by only the countersigning agent and applied to reduction of the unliquidated advance payments under this contract.

(e) Maximum payment. When the sum of all unliquidated advance payments, unpaid interest charges, and other payments exceed 10 percent of the contract price, the Government shall withhold further payments to the Contractor. On completion or termination of the contract, the Government shall deduct from the amount due to the Contractor all unliquidated advance payments and all interest charges payable. If previous payments to the Contractor exceed the amount due, the excess amount shall be paid to the Government on demand. For purposes of this paragraph, the contract price shall be considered to be the stated contract amount inserted in this paragraph. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(1) Interest. (i) The Contractor shall pay interest to the Government on the daily unliquidated advance payments at the daily rate specified in subparagraph (f)(3) below. Interest shall be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charge—

(ii) Advance payments shall be considered as increasing the unliquidated balance as of the date of the advance payment check;

(iii) Repayments by Contractor check shall be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the Contracting Officer; and

(iv) Liquidations by deductions from Government payments to the Contractor shall be considered as decreasing the unliquidated balance as of the date of the check for the reduced payment.

(2) Interest charges resulting from the monthly computation shall be deducted from payments, other than advance payments, due the Contractor. If the accrued interest exceeds the payment due, any excess interest shall be carried forward and deducted from subsequent payments. Interest carried forward shall not be compounded. Interest on advance payments shall cease to accrue upon satisfactory completion or termination of the contract for the convenience of the Government. The Contractor shall charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors for experimental, developmental, or research work.

(3) If interest is required under the contract, the Contracting Officer shall determine a daily interest rate based on the higher of (i) the published prime rate of the financial institution (depository) in which the special account is established or (ii) the rate established by the Secretary of the Treasury under Pub. L. 92–41 (50 U.S.C. App. 1215(b)(2)). The Contracting Officer shall revise the
daily interest rate during the contract period in keeping with any changes in the cited interest rates.

(4) If the full amount of interest charged under this paragraph has not been paid by deduction or otherwise upon completion or termination of this contract, the Contractor shall pay the remaining interest to the Government on demand.

(g) Financial institution agreement. Before an advance payment is made under this contract, the Contractor shall transmit to the administering office, in the form prescribed by the administering office, an agreement in triplicate from the financial institution in which the special account is established, clearly setting forth the special character of the account and the responsibilities of the financial institution under the account. The Contractor shall select a financial institution that is a member bank of the Federal Reserve System, an "insured" bank within the meaning of the Federal Deposit Insurance Corporation Act (12 U.S.C. 1811), or a credit union insured by the National Credit Union Administration.

(h) Lien on Special Bank Account. The Government shall have a lien upon any balance in the special account paramount to all other liens. The Government lien shall secure the repayment of any advance payments made under this contract and any related interest charges.

(1) Lien on property under contract. All advance payments under this contract, together with interest charges, shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, on the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other terms of this contract, or otherwise, shall have valid title to the supplies, materials, or other property as against other creditors of the Contractor.

(2) The Contractor shall identify, by marking or segregation, all property that is subject to a lien in favor of the Government by virtue of any terms of this contract in such a way as to indicate that it is subject to a lien and that it has been acquired for or allocated to performing this contract. If, for any reason, the supplies, materials, or other property are not identified by marking or segregation, the Government shall be considered to have a lien to the extent of the Government’s interest under this contract on any mass of property with which the supplies, materials, or other property are mingled. The Contractor shall maintain adequate accounting control over the property on its books and records.

(3) If, at any time during the progress of the work on the contract, it becomes necessary to deliver to a third person any items or materials on which the Government has a lien, the Contractor shall notify the third person of the lien and shall obtain from the third person a receipt in duplicate acknowledging the existence of the lien. The Contractor shall provide a copy of each receipt to the Contracting Officer.

(4) If, under the termination clause, the Contractor to sell or retain termination inventory, the approval shall constitute a release of the Government's lien to the extent that—

(i) The termination inventory is sold or retained; and

(ii) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.

(l) Insurance. (1) The Contractor shall maintain with responsible insurance carriers—

(i) Insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality;

(ii) Adequate insurance against liability on account of damage to persons or property; and

(iii) Adequate insurance under all applicable workers’ compensation laws.

(2) Until work under this contract has been completed and all advance payments made under the contract have been liquidated, the Contractor shall—

(i) Maintain this insurance;

(ii) Maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (i) of this clause; and

(iii) Furnish any evidence with respect to its insurance that the administering office may require.

(k) Default. (1) If any of the following events occurs, the Government may, by written notice to the Contractor, withhold further withdrawals from the special account and further payments on this contract:

(i) Termination of this contract for a fault of the Contractor.

(ii) A finding by the administering office that the Contractor has failed to—

(A) Observe any of the conditions of the advance payment terms;

(B) Comply with any material term of this contract;

(C) Make progress or maintain a financial condition adequate for performance of this contract;

(D) Limit inventory allocated to this contract to reasonable requirements; or

(E) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.
(iii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor’s property, or the institution of proceedings by or against the Contractor under any bankruptcy, reorganization, arrangement, or liquidation.

(iv) The service of any writ of attachment, levy of execution, or commencement of garnishment proceedings concerning the special account.

(v) The commission of an act of bankruptcy.

(2) If any of the events described in subparagraph (1) above continue for 30 days after the written notice to the Contractor, the Government may take any of the following additional actions:

(i) Withdraw by checks payable to the Treasurer of the United States, signed only by the countersigning agency, all or any part of the balance in the special account and apply the amounts to reduce outstanding advance payments and any other claims of the Government against the Contractor.

(ii) Charge interest, in the manner prescribed in paragraph (f) above, on outstanding advance payments during the period of any event described in subparagraph (1) above.

(iii) Demand immediate repayment by the Contractor of the unliquidated balance of advance payments.

(iv) Take possession of and, with or without advertisement, sell at public or private sale all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incurred in the sale, apply the net proceeds of the sale to reduce the unliquidated balance of advance payments or other Government claims against the Contractor.

(3) The Government may take any of the actions described in subparagraphs (k)(1) and (2) of this clause it considers appropriate at its discretion and without limiting any other rights of the Government.

(l) Prohibition against assignment. Notwithstanding any other terms of this contract, the Contractor shall not assign this contract, any interest therein, or any claim under the contract to any party.

(m) Information and access to records. The Contractor shall furnish to the administering office (1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements together with a report on the operation of the special account in the form prescribed by the administering office; and (2) if requested, other information concerning the operation of the Contractor’s business. The Contractor shall provide the authorized Government representatives proper facilities for inspection of the Contractor’s books, records, and accounts.

(a) Other security. The terms of this contract are considered to provide adequate security to the Government for advance payments; however, if the administering office considers the security inadequate, the Contractor shall furnish additional security satisfactory to the administering office, to the extent that the security is available.

(o) Representations. The Contractor represents the following:

(1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished to the administering office fairly reflect the financial condition of the Contractor at the date shown or the period covered, and there has been no subsequent materially adverse change in the financial condition of the Contractor.

(2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the financial statements.

(3) The Contractor has disclosed all contingent liabilities, except for liability resulting from the renegotiation of defense production contracts, in the financial statements furnished to the administering office.

(4) None of the terms in this clause conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(5) The Contractor has the power to enter into this contract and accept advance payments, and has taken all necessary action to authorize the acceptance under the terms of this contract.

(6) The assets of the Contractor are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor. There is no current assignment of claims under any contract affected by these advance payment provisions.

(7) All information furnished by the Contractor to the administering office in connection with each request for advance payments is true and correct.

(8) These representations shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.

(p) Covenants. To the extent the Government considers it necessary while any advance payments made under this contract remain outstanding, the Contractor, without the prior written consent of the administering office, shall not—

(1) Mortgage, pledge, or otherwise encumber or allow to be encumbered, any of the assets of the Contractor now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to performing this contract and with respect to which the Government has a lien under this contract;
(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any of its stock, except as required by sinking fund or redemption arrangements reported to the administering office incident to the establishment of these advance payment provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or governmental authority, except direct obligations of the United States;

(6) Make any advance or loan or incur any liability as guarantor, surety, or accommodation endorser for any party;

(7) Permit a writ of attachment or any similar process to be issued against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;

(8) Pay any remuneration in any form to its directors, officers, or key employees higher than rates provided in existing agreements of which notice has been given to the administering office; or employ any person at a rate subordinating it to all claims of the Government; or employ any person at a rate of compensation over $1,000 a year;

(9) Change substantially the management, ownership, or control of the corporation;

(10) Merge or consolidate with any other firm or corporation, change the type of business, or engage in any transaction outside the ordinary course of the Contractor’s business as presently conducted;

(11) Create or incur indebtedness for advances, other than advances to be made under the terms of this contract, or for borrowings;

(12) Make or covenant for capital expenditures exceeding $1,000 in total;

(13) Make or covenant for capital expenditures exceeding $1,000; or

(14) Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than $1,000; or

(15) Make any payments on account of the obligations listed below, except in the manner and to the extent provided in this contract:

List the pertinent obligations

(End of clause)

Alternate I (APR 1984). If the agency desires to waive the countersignature requirement because of the Contractor’s financial strength, good performance record, and favorable experience concerning cost disallowances, add the following sentence, if appropriate, to paragraph (b) of the basic clause:

However, for this contract, countersignature on behalf of the Government will not be required unless it is determined necessary by the administering office.

Alternate II (MAY 2001). If used in a cost-reimbursement contract, substitute the following paragraphs (c) and (e), and subparagraphs (f)(1) and (f)(2) for paragraphs (c) and (e) and subparagraphs (f) (1) and (2) of the basic clause:

(c) Use of funds. The Contractor shall withdraw funds from the special account only to pay for allowable costs as prescribed by the clause of this contract. Payment for any other types of expenses shall be approved in writing by the administering office.

(e) Maximum payment. When the sum of all unliquidated advance payments, unpaid interest charges, and other payments equal the total estimated cost of $1,000 (not including fixed-fee, if any) for the work under this contract, the Government shall withhold further payments to the Contractor. Upon completion or termination of the contract, the Government shall deduct from the amount due to the Contractor all unliquidated advance payments and interest charges payable. The Contractor shall pay any deficiency to the Government upon demand. For purposes of this paragraph, the estimated cost shall be considered to be the stated estimated cost, less any subsequent reductions of the estimated cost, plus any increases in the estimated costs that do not, in the aggregate, exceed $1,000. (Insert an amount not higher than 10 percent of the stated estimated cost inserted in this paragraph.) The estimated cost shall include, without limitation, any reimbursable cost (as estimated by the Contracting Officer) incident to a termination for the convenience of the Government. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(f) Interest. (1) The Contractor shall pay interest to the Government on the daily unliquidated advance payments at the daily rate specified in subparagraph (f)(3) below. Interest shall be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charge, the following shall be observed:

(i) Advance payments shall be considered as increasing the unliquidated balance as of the date of the advance payment check;

(ii) Repayments by Contractor shall be considered as decreasing the unliquidated
balance as of the date on which the check is received by the Government authority designated by the Contracting Officer.

(iii) Liquidations by deductions from payments to the Contractor shall be considered as decreasing the unliquidated balance as of the dates on which the Contractor presents to the Contracting Officer full and accurate data for the preparation of each voucher. Credits resulting from these deductions shall be made upon the approval of the reimbursement vouchers by the Disbursing Officer, based upon the Contracting Officer’s certification of the applicable dates.

(2) Interest charges resulting from the monthly computation shall be deducted from any payments on account of the fixed-fee due to the Contractor. If the accrued interest exceeds the payment due, any excess interest shall be carried forward and deducted from subsequent payments of the contract price or fixed-fee. Interest carried forward shall not be compounded. Interest on advance payments shall cease to accrue upon (i) satisfactory completion or (ii) termination of the contract for the convenience of the Government. The Contractor shall charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors for experimental, developmental, or research work.

Alternate III (APR 1984). If the agency considers a more rapid liquidation appropriate, add the following sentence as the first sentence of paragraph (e) of the basic clause with the appropriate percentage specified:

To liquidate the principal amount of any advance payment made to the Contractor, there shall be deductions of ___ percent from all payments made by the Government under the contracts involved.

Alternate IV (APR 1984). If the agency provides advance payments under the contract at no interest to the prime contractor, add the following sentences as the beginning sentences of paragraph (f) of the clause:

No interest shall be charged to the prime Contractor for advance payments except for interest charged during a period of default. The terms of this paragraph concerning interest charges for advance payments shall not apply to the prime Contractor.

Alternate V (MAY 2001). If the requirement for a special account is eliminated in accordance with 32.409-3 (e) or (g), insert the clause set forth below instead of the basic clause.

If this Alternate is used in combination with Alternate II, disregard the instructions concerning paragraph (c), Use of funds, in Alternate II; substitute paragraph (e), Maximum payment, in Alternate II for paragraph (d) below; and substitute paragraph (f), Interest, in Alternate II for paragraph (e) below and change the reference to paragraph (f)(3) in the first sentence of paragraph (f) of Alternate II to (e)(3).

If this Alternate is used in combination with Alternate III, insert the additional sentence set forth in Alternate III as the first sentence of paragraph (d) of this Alternate.

If this Alternate is used in combination with Alternate IV, insert the additional sentences set forth in Alternate IV as the beginning sentences of paragraph (e) of this Alternate.

ADVANCE PAYMENTS WITHOUT SPECIAL ACCOUNT (MAY 2001)

(a) Requirements for payment. Advance payments will be made under this contract (1) upon submission of properly certified invoices or vouchers by the contractor, and approval by the administering office, (insert the name of the office designated under agency procedures), or (2) under a letter of credit. The amount of the invoice or voucher submitted plus all advance payments previously approved shall not exceed $_____. If a letter of credit is used, the Contractor shall withdraw cash only when needed for disbursements acceptable under this contract and report cash disbursements and balances as required by the administering office. The Contractor shall apply terms similar to this clause to any advance payments to subcontractors.

(b) Use of funds. The Contractor may use advance payment funds only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, and indirect costs. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of part 31 of the Federal Acquisition Regulation.

(c) Repayment to the Government. At any time, the Contractor may repay all or any part of the funds advanced by the Government. Whenever requested in writing to do so by the administering office, the Contractor shall repay to the Government any part of unliquidated advance payments considered by the administering office to exceed the Contractor’s current requirements or the amount specified in paragraph (a) of this clause.
(d) **Maximum payment.** When the sum of all unliquidated advance payments, unpaid interest charges, and other payments exceed 10 percent of the contract price, the Government shall withhold further payments to the Contractor. On completion or termination of the contract, the Government shall deduct from the amount due to the Contractor all unliquidated advance payments and all interest charges payable. If previous payments to the Contractor exceed the amount due, the excess amount shall be paid to the Government on demand. For purposes of this paragraph, the contract price shall be considered to be the stated contract price of $, less any subsequent price reductions under the contract, plus (1) any price increases resulting from any terms of this contract for price redetermination or escalation, and (2) any other price increases that do not, in the aggregate, exceed $ (insert an amount not higher than 10 percent of the stated contract amount inserted in this paragraph). Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(e) **Interest.** (1) The Contractor shall pay interest to the Government on the daily unliquidated advance payments at the daily rate in subparagraph (e)(3) of this clause. Interest shall be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charges—

(i) Advance payments shall be considered as increasing the unliquidated balance as of the date of the advance payment check;

(ii) Repayments by Contractor check shall be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the Contracting Officer; and

(iii) Liquidations by deductions from Government payments to the Contractor shall be considered as decreasing the unliquidated balance as of the date of the check for the reduced payment.

(2) Interest charges resulting from the monthly computation shall be deducted from payments, other than advance payments, due the Contractor. If the accrued interest exceeds the payment due, any excess interest shall be carried forward and deducted from subsequent payments. Interest carried forward shall not be compounded. Interest on advance payments shall cease to accrue upon satisfactory completion or termination of the contract for the convenience of the Government. The Contractor shall charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors, for experimental, developmental, or research work.

(3) If interest is required under the contract, the Contracting Officer shall determine a daily interest rate based on the rate established by the Secretary of the Treasury under Pub. L. 92-41 (50 U.S.C. App., 1215(b)(2)). The Contracting Officer shall revise the daily interest rate during the contract period in keeping with any changes in the cited interest rate.

(4) If the full amount of interest charged under this paragraph has not been paid by deduction or otherwise upon completion or termination of this contract, the Contractor shall pay the remaining interest to the Government on demand.

(f) **Lien on property under contract.** (1) All advance payments under this contract, together with interest charges, shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, on the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other terms of this contract, or otherwise, shall have valid title to the supplies, materials, or other property as against other creditors of the Contractor.

(2) The Contractor shall identify, by marking or segregation, all property that is subject to a lien in favor of the Government by virtue of any terms of this contract in such a way as to indicate that it is subject to a lien and that it has been acquired for or allocated to performing this contract. If, for any reason, the supplies, materials, or other property are not identified by marking or segregation, the Government shall be considered to have a lien to the extent of the Government’s interest under this contract on any mass of property with which the supplies, materials, or other property are mingled. The Contractor shall maintain adequate accounting control over the property on its books and records.

(3) If, at any time during the progress of the work on the contract, it becomes necessary to deliver to a third person any items or materials on which the Government has a lien, the Contractor shall notify the third person of the lien and shall obtain from the third person a receipt in duplicate acknowledging the existence of the lien. The Contractor shall provide a copy of each receipt to the Contracting Officer.

(4) If, under the termination clause, the Contracting Officer authorizes the contractor to sell or retain termination inventory, the approval shall constitute a release of the Government’s lien to the extent that—

(i) The termination inventory is sold or retained; and

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266
Federal Acquisition Regulation

52.232-12

(ii) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.

(g) Insurance. (1) The Contractor shall maintain with responsible insurance carriers—

(i) Insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality;

(ii) Adequate insurance against liability on account of damage to persons or property; and

(iiI) Adequate insurance under all applicable workers' compensation laws.

(2) Until work under this contract has been completed and all advance payments made under the contract have been liquidated, the Contractor shall—

(i) Maintain this insurance;

(ii) Maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (f) of this clause; and

(iii) Furnish any evidence with respect to its insurance that the administering office may require.

(h) Default. (1) If any of the following events occur, the Government may, by written notice to the Contractor, withhold further payments on this contract:

(i) Termination of this contract for a fault of the Contractor.

(ii) A finding by the administering office that the Contractor has failed to—

(A) Observe any of the conditions of the advance payment terms;

(B) Comply with any material term of this contract;

(C) Make progress or maintain a financial condition adequate for performance of this contract;

(D) Limit inventory allocated to this contract to reasonable requirements; or

(E) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.

(iii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or the institution of proceedings by or against the Contractor for bankruptcy, reorganization, arrangement, or liquidation.

(iv) The commission of an act of bankruptcy.

(2) If any of the events described in subparagraph (h)(1) of this clause continue for 30 days after the written notice to the Contractor, the Government may take any of the following additional actions:

(i) Charge interest, in the manner prescribed in paragraph (e) of this clause, on outstanding advance payments during the period of any event described in subparagraph (h)(1) of this clause.

(ii) Demand immediate repayment by the Contractor of the unliquidated balance of advance payments.

(iii) Take possession of and, with or without advertisement, sell at public or private sale all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to the sale, apply the net proceeds of the sale to reduce the unliquidated balance of advance payments or other Government claims against the Contractor.

(3) The Government may take any of the actions described in subparagraphs (h)(1) and (h)(2) of this clause it considers appropriate at its discretion and without limiting any other rights of the Government.

(i) Prohibition against assignment. Notwithstanding any other terms of this contract, the Contractor shall not assign this contract, any interest therein, or any claim under the contract to any party.

(j) Information and access to records. The Contractor shall furnish to the administering office (1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements, and, (2) if requested, other information concerning the operation of the contractor's business. The Contractor shall provide the authorized Government representatives proper facilities for inspection of the Contractor's books, records, and accounts.

(k) Other security. The terms of this contract are considered to provide adequate security to the Government for advance payments; however, if the administering office considers the security inadequate, the Contractor shall furnish additional security satisfactory to the administering office, to the extent that the security is available.

(l) Representations. The Contractor represents the following:

(1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished to the administering office fairly reflect the financial condition of the Contractor at the date shown or the period covered, and there has been no subsequent materially adverse change in the financial condition of the Contractor.

(2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the financial statements.

(3) The Contractor has disclosed all contingent liabilities, except for liability resulting from the renegotiation of defense production contracts, in the financial statements furnished to the administering office.
None of the terms in this clause conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

The Contractor has the power to enter into this contract and accept advance payments, and has taken all necessary action to authorize the acceptance under the terms of this contract.

The assets of the Contractor are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor. There is no current assignment of claims under any contract affected by these advance payment provisions.

All information furnished by the Contractor to the administering office in connection with each request for advance payments is true and correct.

These representations shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.

Covenants. To the extent the Government considers it necessary while any advance payments made under this contract remain outstanding, the Contractor, without the prior written consent of the administering office, shall not:

1. Mortgage, pledge, or otherwise encumber or allow to be encumbered, any of the assets of the Contractor now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to performing this contract and with respect to which the Government has a lien under this contract;

2. Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for money due or to become due;

3. Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any of its stock, except as required by sinking fund or redemption arrangements reported to the administering office incident to the establishment of these advance payment provisions;

4. Sell, convey, or lease all or a substantial part of its assets;

5. Acquire for value the stock or other securities of any corporation, municipality, or Governmental authority, except direct obligations of the United States;

6. Make any advance or loan or incur any liability as guarantor, surety, or accommodation endorser for any party;

7. Permit a writ of attachment or any similar process to be issued against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;

8. Pay any remuneration in any form to its directors, officers, or key employees higher than rates provided in existing agreements of which notice has been given to the administering office; accrue excess remuneration without first obtaining an agreement subordinating it to all claims of the Government; or employ any person at a rate of compensation over _____ a year.

9. Change substantially the management, ownership, or control of the corporation;

10. Merge or consolidate with any other firm or corporation, change the type of business, or engage in any transaction outside the ordinary course of the Contractor’s business as presently conducted;

11. Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation or a credit union insured by the National Credit Union Administration;

12. Create or incur indebtedness for advances, other than advances to be made under the terms of this contract, or for borrowings;

13. Make or covenant for capital expenditures exceeding $____ in total;

14. Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than _____;

15. Make any payments on account of the obligations listed below, except in the manner and to the extent provided in this contract:

List the pertinent obligations

As prescribed in 32.502-3(a), insert the following provision in invitations for bids and requests for proposals that include a Progress Payments clause:

NOTICE OF PROGRESS PAYMENTS (APR 1984)

The need for customary progress payments conformed to the regulations in subpart 32.5 of the Federal Acquisition Regulation (FAR) will not be considered as a handicap or adverse factor in the award of the contract. The Progress Payments clause included in this solicitation will be included in any resulting contract, modified or altered if necessary in accordance with subsection 52.232-16 and its Alternate I of the FAR. Even though the clause is included in the contract, the clause shall be inoperative during any time the contractor’s accounting system
Federal Acquisition Regulation

and controls are determined by the Government to be inadequate for segregation and accumulation of contract costs.

(End of provision)

52.232-14 Notice of Availability of Progress Payments Exclusively for Small Business Concerns.

As prescribed in 32.502-3(b)(2), insert the following provision in invitations for bids if it is anticipated that (a) both small business concerns and others may submit bids in response to the same invitation and (b) only the small business bidders would need progress payments:

NOTICE OF AVAILABILITY OF PROGRESS PAYMENTS EXCLUSIVELY FOR SMALL BUSINESS CONCERNS (APR 1984)

The Progress Payments clause will be available only to small business concerns. Any bid conditioned upon inclusion of a progress payment clause in the resulting contract will be rejected as nonresponsive if the bidder is not a small business concern.

(End of provision)

52.232-15 Progress Payments Not Included.

As prescribed in 32.502-3(c), insert the following provision in invitations for bids if the solicitation will not contain one of the provisions prescribed in 32.502-3 (a) and (b):

PROGRESS PAYMENTS NOT INCLUDED (APR 1984)

A progress payments clause is not included in this solicitation, and will not be added to the resulting contract at the time of award. Any bid conditioned upon inclusion of a progress payment clause in the resulting contract will be rejected as nonresponsive.

(End of provision)

52.232-16 Progress Payments.

As prescribed in 32.502-4(a), insert the following clause:

PROGRESS PAYMENTS (JUL 2009)

The Government will make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts of $2,500 or more approved by the Contracting Officer, under the following conditions:

(a) Computation of amounts. (1) Unless the Contractor requests a smaller amount, the Government will compute each progress payment as 80 percent of the Contractor’s total costs incurred under this contract whether or not actually paid, plus financing payments to subcontractors (see paragraph (j) of this clause), less the sum of all previous progress payments made by the Government under this contract. The Contracting Officer will consider cost of money that would be allowable under FAR 31.205-10 as an incurred cost for progress payment purposes.

(2) The amount of financing and other payments for supplies and services purchased directly for the contract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that are determined due and will be paid to subcontractors—

(i) In accordance with the terms and conditions of a subcontract or invoice; and

(ii) Ordinarily within 30 days of the submission of the Contractor’s payment request to the Government.

(3) The Government will exclude accrued costs of Contractor contributions under employee pension plans until actually paid unless—

(i) The Contractor’s practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor’s total costs for progress payments until paid).

(4) The Contractor shall not include the following in total costs for progress payment purposes in paragraph (a)(1) of this clause:

(i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

(ii) Costs incurred by subcontractors or suppliers.

(iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(iv) Payments made or amounts payable to subcontractors or suppliers, except for—

(A) Completed work, including partial deliveries, to which the Contractor has acquired title; and

(B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(5) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Contractor and acceptance by the Government are incomplete.
(6) The total amount of progress payments shall not exceed 80 percent of the total contract price.

(7) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the Contractor shall repay the amount of such excess to the Government on demand.

(b) Notwithstanding any other terms of the contract, the Contractor agrees not to request progress payments in dollar amounts of less than $2,500. The Contracting Officer may make exceptions.

(b) The costs applicable to items delivered, invoiced, and accepted shall not include costs in excess of the contract price of the items.

(b) Liquidation. Except as provided in the Termination for Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or 80 percent of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

(c) Reduction or suspension. The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

1. The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) below).

2. Performance of this contract is endangered by the Contractor’s failure to make progress or (ii) unsatisfactory financial condition.

3. Inventory allocated to this contract substantially exceeds reasonable requirements.

4. The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

5. The fair value of the undelivered work is less than the amount of unliquidated progress payments for that work.

6. The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.

(d) Title. (1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) Property, as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;

(iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (ii) above; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract, e.g., the termination or special tooling clauses, shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract without requesting the Contracting Officer’s approval, but the proceeds shall be credited against the costs of performance.

(5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer’s advance approval of the action and the terms. The Contractor shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Government any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(e) Risk of loss. Before delivery to and acceptance by the Government, the Contractor...
shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.

1. Control of costs and property. The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

2. Reports, forms, and access to records. (1) The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information (including estimates to complete) reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor’s books, records, and accounts.

3. Each Contractor request for progress payment shall:

   (i) Be submitted on Standard Form 1443, Contractor’s Request for Progress Payment, or the electronic equivalent as required by agency regulations, in accordance with the form instructions and the contract terms; and

   (ii) Include any additional supporting documentation requested by the Contracting Officer.

4. Special terms regarding default. If this contract is terminated under the Default clause, (i) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the Default clause. The Government shall be liable for no payment except as provided by the Default clause.

   (i) Reservations of rights. (1) No payment or vesting of title under this clause shall (i) excuse the Contractor from performance of obligations under this contract or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

   (2) The Government’s rights and remedies under this clause (i) shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

5. Financing payments to subcontractors. The financing payments to subcontractors mentioned in paragraphs (a)(1) and (a)(2) of this clause shall be all financing payments to subcontractors or divisions, if the following conditions are met:

   (i) The amounts included are limited to—

   (1) The unliquidated remainder of financing payments made; plus

   (2) Any unpaid subcontractor requests for financing payments.

   (2) The subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery; or, if the subcontractor is a small business concern, 4 months.

   (3) If the financing payments are in the form of progress payments, the terms of the subcontract or interdivisional order concerning progress payments—

   (i) Are substantially similar to the terms of this clause for any subcontractor that is a large business concern, or this clause with the Alternate I for any subcontractor that is a small business concern;

   (ii) Are at least as favorable to the Government as the terms of this clause;

   (iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;

   (iv) Are in conformance with the requirements of FAR 32.504(e); and

   (v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government’s right to require delivery of the property to the Government if—

   (A) The Contractor defaults; or

   (B) The subcontractor becomes bankrupt or insolvent.

   (4) If the financing payments are in the form of performance-based payments, the terms of the subcontract or interdivisional order concerning payments—

   (i) Are substantially similar to the Performance-Based Payments clause at FAR 52.232-32 and meet the criteria for, and definition of, performance-based payments in FAR Part 32;

   (ii) Are in conformance with the requirements of FAR 32.504(f); and

   (iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government’s right to require delivery of the property to the Government if—

   (A) The Contractor defaults; or

   (B) The subcontractor becomes bankrupt or insolvent.
(5) If the financing payments are in the form of commercial item financing payments, the terms of the subcontract or interdivisional order concerning payments—
(A) Are consistent with the standards for acquisition of commercial items in FAR Parts 2 and 12;
(B) Are in conformance with the requirements of FAR 32.504(h); and
(C) Are in conformance with the requirements of FAR 32.504(g); and
(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government’s right to require delivery of the property to the Government if—
(A) The Contractor defaults; or
(B) The subcontractor becomes bankrupt or insolvent.

(6) If financing is in the form of progress payments, the progress payment rate in the subcontract is the customary rate used by the contracting agency, depending on whether the subcontractor is or is not a small business concern.

(7) Concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, the parties agree that the proceeds shall be applied to reducing any unliquidated financing payments by the Government to the Contractor under this contract.

(8) If no unliquidated financing payments to the Contractor remain, but there are unliquidated financing payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(9) To facilitate small business participation in subcontracting under this contract, the Contractor shall provide financing payments to small business concerns, in conformance with the standards for customary contract financing payments stated in FAR 32.113. The Contractor shall not consider the need for such financing payments as a handicap or adverse factor in the award of subcontracts.

(k) Limitations on undefinitized contract actions. Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under undefinitized contract actions. A contract action is any action resulting in a contract, as defined in subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefinitized contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 80 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(l) Due date. The designated payment office will make progress payments on the [Contracting Officer insert date as prescribed by agency head; if not prescribed, insert “30th”] day after the designated billing office receives a proper progress payment request. In the event that the Government requires an audit or other review of a specific progress payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date. Progress payments are considered contract financing and are not subject to the interest penalty provisions of the Prompt Payment Act.

(m) Progress payments under indefinite—delivery contracts. The Contractor shall account for and submit progress payment requests under individual orders as if the order constituted a separate contract, unless otherwise specified in this contract.

(End of clause)

Alternate I (MAR 2000). If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of 85 percent for small business concerns (see FAR 32.501–1).

Alternate II (APR 2003). If the contract is a letter contract, add paragraphs (n) and (o). The amount specified in paragraph (o) shall not exceed 80 percent of the maximum liability of the Government under the letter contract. The contracting officer may specify separate limits for separate parts of the work.
the following paragraph as paragraph (n) to the basic clause. If

Alternate III (APR 2003), As prescribed in 52.232–4(d), add the following paragraph (n) to the basic clause. If Alternate II is also being used, redesignate the following paragraph as paragraph (p):

(n) The provisions of this clause will not be applicable to individual orders at or below the simplified acquisition threshold.

52.232–17 Interest.

As prescribed in 32.611(a) and (b), insert the following clause:

INTEREST (OCT 2008)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 96–563), which is applicable to the period in which the amount becomes due, as provided in paragraph (e) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(c) Final Decisions: The Contracting Officer will issue a final decision as required by 33.211 if—

(1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement;

(3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607–2).

(d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(e) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(1) The date on which the designated office receives payment from the Contractor;

(2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(g) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608–2 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)
52.232–18 Availability of Funds.

As prescribed in 32.705–1(a), insert the following clause:

**AVAILABILITY OF FUNDS (APR 1984)**

Funds are not presently available for this contract. The Government’s obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)


52.232–19 Availability of Funds for the Next Fiscal Year.

As prescribed in 32.705–1(b), insert the following clause in solicitations and contracts if a one-year indefinite-quantity or requirements contract for services is contemplated and the contract (a) is funded by annual appropriations and (b) is to extend beyond the initial fiscal year (see 32.703–2(b)):

**AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR (APR 1984)**

Funds are not presently available for performance under this contract beyond . The Government’s obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond , until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

52.232–20 Limitation of Cost.

As prescribed in 32.705–2(a), insert the following clause in solicitations and contracts if a fully funded cost-reimbursement contract is contemplated, whether or not the contract provides for payment of a fee. The 60-day period may be varied from 30 to 90 days and the 75 percent from 75 to 85 percent.

**Task Order or other appropriate designation may be substituted for Schedule wherever that word appears in the clause.**

**LIMITATION OF COST (APR 1984)**

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government’s share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government’s and the Contractor’s share of the cost.

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that—

(1) The costs the Contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or

(2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing contract, the estimated cost to the Government specified in the Schedule; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, unless the Contractor (a) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimate of the total cost of performing this contract. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Contracting Officer, shall affect this contract’s estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the estimated cost or, if this is a
Federal Acquisition Regulation

52.232-22 Limitation of Funds.

As prescribed in 32.705-2(b), insert the following clause in solicitations and contracts if an incrementally funded cost-reimbursement contract is contemplated. The 60-day period may be varied from 30 to 90 days and the 75 percent from 75 to 85 percent. Task Order or other appropriate designation may be substituted for Schedule wherever that word appears in the clause.

LIMITATION OF FUNDS (APR 1984)

(a) The parties estimate that performance of this contract will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Schedule, except for any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract.

(c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the Government or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Government plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.

(f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

1. The Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Government to this contract; and

2. The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of (i) the amount then allotted to the contract by the Government or, (ii) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has
been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to this contract.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Government or, (2) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to this contract. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this contract, whether incurred during the course of the contract or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the contract is increased, any costs the Contractor incurs before the increase that are in excess of (1) the amount previously allotted by the Government or, (2) if this is a cost-sharing contract, the amount previously allotted by the Government to the contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the Schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the Government to terminate this contract. If this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this contract.

(End of clause)

52.232–23 Assignment of Claims.

As prescribed in 32.806(a)(1), insert the following clause:

**Assignment of Claims (JAN 1986)**

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as the Act), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(End of clause)

Alternate I (APR 1984). If a no-setoff commitment is to be included in the contract (see 32.901 and 32.903(d)), add the following sentence at the end of paragraph (a) of the basic clause:

Unless otherwise stated in this contract, payments to an assignee of any amounts due or to become due under this contract shall not, to the extent specified in the Act, be subject to reduction or setoff.

52.232–24 Prohibition of Assignment of Claims.

As prescribed in 32.806(b), insert the following clause:

**Prohibition of Assignment of Claims (JAN 1986)**

The assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, is prohibited for this contract.
Federal Acquisition Regulation

(End of clause)


52.232–25 Prompt payment.

As prescribed in 32.908(c), insert the following clause:

PROMPT PAYMENT (OCT. 2008)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer (EFT). Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments—(1) Due date. (i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office is the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(i) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed. For a final invoice, due and payable at a fixed price, the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement, and, if the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor’s invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Certain food products and other payments. (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; dairy products, edible fats or oils, and food products prepared from edible fats or oils are—

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98–181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4903(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(3) Contractor’s invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.

(i) Name and address of the Contractor. (ii) Invoice date and invoice number. (iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, discount
48 CFR Ch. 1 (10–1–09 Edition)

52.232–25

for prompt payment terms. Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(ix) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232–33, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232–34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract (e.g., evidence of shipment).

(4) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance is deemed to occur constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivers the supplies or performs the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. If actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes and any interest that may be payable in accordance with the clause at FAR 52.233–1, Disputes.

(6) Discounts for prompt payment. The designated payment office will pay a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(7) Additional interest penalty. (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if—

(A) The Government owes an interest penalty of $1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(7)(i) of this clause, postmarked not later than 40 days after the invoice amount is paid.
Federal Acquisition Regulation

52.232–26

Prompt payment for fixed-price architect-engineer contracts.

As prescribed in 32.908(a), insert the following clause:

PROMPT PAYMENT FOR FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (OCT 2008)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (d)(3) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments—(1) Due date. The due date for making invoice payments is—

(i) For work or services completed by the Contractor, the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(iii) of this clause).

(B) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice, when the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance is deemed to occur on the effective date of the settlement.

(ii) The due date for progress payments is the 30th day after Government approval of

(End of clause)
Contractor estimates of work or services accomplished.

(iii) If the designated billing office fails to annotate the invoice or payment request with the actual date of receipt at the time of receipt, the payment due date is the 30th day after the date of the Contractor’s invoice or payment request, provided the designated billing office receives a proper invoice or payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Contractor’s invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., discount for prompt payment terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(ix) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-36, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract.

(3) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance or approval is deemed to occur constructively as shown in paragraphs (a)(3)(i)(A) and (B) of this clause. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, Contractor compliance with a contract provision, or requested progress payment amounts. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(A) For work or services completed by the Contractor, Government acceptance is deemed to occur constructively on the 7th day after the Contractor completes the work or services in accordance with the terms and conditions of the contract.
Federal Acquisition Regulation

(B) For progress payments, Government approval is deemed to occur on the 7th day after the designated billing office receives the Contractor estimates.

The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.232-1, Disputes.

(5) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with 5 CFR part 1315.

(6) Additional interest penalty. (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315, in addition to the interest penalty amount only if—

(A) The Government owes an interest penalty of $1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii) (A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall—

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest is due; and

(3) State that payment of the principal has otherwise overpaid on a contract involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.232-1, Disputes.

(B) If there is no postmark or the postmark is illegible—

(1) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made;

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand’s validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(iii) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payments. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected contract line item or subline item, if applicable; and

(iv) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

[End of clause]

52.232–27 Prompt payment for construction contracts.

As prescribed in 32.908(b), insert the following clause:

Prompt Payment for Construction Contracts (OCT 2008)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments—(1) Types of invoice payments. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount
and value of work or services performed, including payments for reaching milestones in any project.

(A) The due date for making such payments is 14 days after the designated billing office receives a proper payment request. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date is the 14th day after the date of the Contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, is as specified in the contract or, if not specified, 30 days after approval by the Contracting Officer for release to the Contractor.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract).

(A) The due date for making such payments is the later of the following two events:

(1) The 30th day after the designated billing office receives a proper invoice from the Contractor.

(2) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice when the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(vi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., discount for prompt payment terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) For payments described in paragraph (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(xi) Any other information or documentation required by the contract.

(3) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office...
may make payment on the following working day without incurring a late payment interest penalty.  
(i) The designated billing office received a proper invoice.  
(ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.  
(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.  

Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.  
(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.  
(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.232-1, Disputes.  

Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.  

Additional interest penalty. (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if—  
(A) The Government owes an interest penalty of $1 or more;  
(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and  
(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.  
(ii) (A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall—  
(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;  
(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and  
(3) State that payment of the principal has been received, including the date of receipt.  
(B) If there is no postmark or the postmark is illegible—  
(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or  
(2) If the designated payment office fails to make the required annotation, the Government will determine the demand’s validity based on the date the Contractor has placed the report or other Government documentation authorizing payment, and the unpaid late payment interest was due; and  
(3) State that payment of the principal has been received, including the date of receipt.  
(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.  

Contract financing payments. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.  
(c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:  
(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.  
(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor
to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause—

(i) For the period beginning on the day after the due date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to—

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that—

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond.

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor’s request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if—

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor’s performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall—

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (e)(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor’s progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (e)(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(i) Make such payment within—

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (e)(1) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government;

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon—

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying—

(A) The amounts withheld under paragraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3306(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until—

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this clause.

(f) Third-party deficiency reports—(1) Withholding from subcontractor. If a Contractor,
after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a “second-tier subcontractor”) a written notice in accordance with the Miller Act (40 U.S.C. 3133), asserting a deficiency in such first-tier subcontractor’s performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause—

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor’s next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.

(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall—

(i) Pay the amount withheld under paragraph (f)(1)(i) of this clause to such first-tier subcontractor; or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(b) Subcontractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(h) Subcontractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the Government is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor’s obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (e) of this clause shall not be construed to be an obligation of the Government for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(l) Prime-subcontractor rights. Except as provided in paragraph (j) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(End of clause)


52.232-28 Invitation To Propose Performance-Based Payments.

As prescribed in 32.1005(b)(1), insert the following provision:

INVITATION TO PROPOSE PERFORMANCE-BASED PAYMENTS (MAR 2000)

(a) The Government invites the offeror to propose terms under which the Government
will make performance-based contract financing payments during contract performance. The Government will consider performance-based payment financing terms proposed by the offeror in the evaluation of the offeror’s proposal. The Contracting Officer will incorporate the financing terms of the successful offeror and the FAR clause, Performance-Based Payments, at FAR 52.232-32, in any resulting contract.

(b) In the event of any conflict between the terms proposed by the offeror and the terms in the clause at FAR 52.232-32, Performance-Based Payments, the terms of the clause at FAR 52.232-32 shall govern.

(c) The Contracting Officer will not accept the offeror’s proposed performance-based payment financing if the financing does not conform to the following limitations:

1. The Government will make delivery payments only for supplies delivered and accepted, or services rendered and accepted in accordance with the payment terms of this contract.
2. The terms and conditions of the performance-based payments must—
   i. Comply with FAR 32.1004;
   ii. Be reasonable and consistent with all other technical and cost information included in the offeror’s proposal; and
   iii. Their total shall not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis.
3. The terms and conditions of the performance-based financing must be in the best interests of the Government.
4. The offeror’s proposal of performance-based payment financing shall include the following:
   i. The proposed contractual language describing the performance-based payments (see FAR 32.1004 for appropriate criteria for establishing performance bases and performance-based finance payment amounts).
   ii. A listing of—
      i. The projected performance-based payment dates and the projected payment amounts; and
      ii. The projected delivery date and the projected payment amount.
   iii. Information addressing the Contractor’s investment in the contract.
5. Evaluation of the offeror’s proposed prices and financing terms will include whether the offeror’s proposed performance-based payment events and payment amounts are reasonable and consistent with all other terms and conditions of the offeror’s proposal.

(End of provision)

Alternate I (MAR 2000). As prescribed in FAR 32.1005(b)(2), add the following paragraph (f) to the basic provision:

(f) The Government will adjust each proposed price to reflect the cost of providing the proposed performance-based payments to determine the total cost to the Government of that particular combination of price and performance-based financing. The Government will make the adjustment using the procedure described in FAR 32.205(c).

[65 FR 16285, Mar. 27, 2000]
Federal Acquisition Regulation

52.232-30

Installment Payments for Commercial Items.

As prescribed in 32.206(g), insert the following clause:

**INSTALLMENT PAYMENTS FOR COMMERCIAL ITEMS (OCT 1995)**

(a) **Contractor entitlement to financing payments.** The Contractor may request, and the Government shall pay, a contract financing installment payment as specified in this contract when: the payment requested is properly due in accordance with this contract; the supplies deliverable or services due under the contract will be delivered or performed in accordance with the contract; and there has been no impairment or diminution of the Government’s security under this contract.

(b) **Computation of amounts.** Installment payment financing shall be paid to the Contractor when requested for each separately priced unit of supply (but not for services) of each contract line item in amounts approved by the Contracting Officer pursuant to this clause.

1. **Number of installment payments for each contract line item.** Each separately priced unit of each contract line item is authorized a fixed number of monthly installment payments. The number of installment payments authorized for each unit of a contract line item is equal to the number of months from the date of contract award to the date one month before the first delivery of the first separately priced unit of the contract line item. For example, if the first scheduled delivery of any separately priced unit of a contract line item is 9 months after award of the contract, all separately priced units of that contract line item are authorized 8 installment payments.

2. **Amount of each installment payment.** The amount of each installment payment for each separately priced unit of each contract line item is equal to 70 percent of the unit price divided by the number of installment payments authorized for that unit.

3. **Date of each installment payment.** Installment payments for any particular separately priced unit of a contract line item begin the number of months prior to the delivery of that unit that are equal to the number of installment payments authorized for that unit. For example, if 8 installment payments are authorized for each separately priced unit of a contract line item, the first installment payment for any particular unit of that contract line item would be 8 months before the scheduled delivery date for that unit. The last installment payment would be 1 month before scheduled delivery of a unit.

4. **Limitation on payment.** Prior to the delivery payment for a separately priced unit of a contract line item, the sum of all installment payments for that unit shall not exceed 70 percent of the price of that unit.

5. **Contractor request for installment payment.** The Contractor may submit requests for payment of installment payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all installment payments in any month for which payment is being requested shall be included in a single request, appropriately itemized and totaled.
(d) Dates for payment. An installment payment under this clause is a contract financing payment under the Prompt Payment clause of this contract, and except as provided in paragraph (e) of this clause, approved requests shall be paid within 30 days of submittal of a proper request for payment.

(e) Liquidation of installment payments. Installment payments shall be liquidated by deducting from the delivery payment of each item the total unliquidated amount of installment payments made for that separately priced unit of that contract line item. The liquidation amounts for each unit of each line item shall be clearly delineated in each request for delivery payment submitted by the Contractor.

(f) Security for installment payment financing. In the event the Contractor fails to provide adequate security as required in this contract, no financing payment shall be made under this contract. Upon receipt of adequate security, financing payments shall be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the contract. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided, and suspend further payments to the Contractor; the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(g) Special terms regarding termination for cause. If this contract is terminated for cause, the Contractor shall, on demand, repay to the Government the amount of unliquidated installment payments. The Government shall be liable for no payment except as provided by the Termination for Cause paragraph of the clause at 52.212-4, Contract Terms and Conditions—Commercial Items.

(h) Reservation of rights. (1) No payment, vesting of title under this clause, or other action taken by the Government under this clause shall (i) excuse the Contractor from performance of obligations under this contract, or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government’s rights and remedies under this clause (i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract, and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(i) Content of Contractor’s request for installment payment. The Contractor’s request for installment payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for installment payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made; and

(4) An itemized and totaled statement of the items, installment payment amount, and month for which payment is being requested, for each separately priced unit of each contract line item.

(End of clause)

[60 FR 49717, Sept. 26, 1995]

52.232–31 Invitation To Propose Financing Terms.

As prescribed in 32.205(b) and 32.206, insert the following provision:

INVITATION TO PROPOSE FINANCING TERMS

(OCT 1995)

(a) The offeror is invited to propose terms under which the Government shall make contract financing payments during contract performance. The financing terms proposed by the offeror shall be a factor in the evaluation of the offeror’s proposal. The financing terms of the successful offeror and the clause, Terms for Financing of Purchases of Commercial Items, at 52.232–29, shall be incorporated in any resulting contract.

(b) The offeror agrees that in the event of any conflict between the terms proposed by the offeror and the terms in the clause at 52.232–29, Terms for Financing of Purchases of Commercial Items, the terms of the clause at 52.232–29 shall govern.

(c) Because of statutory limitations (10 U.S.C. 2307(f) and 41 U.S.C. 255(f)), the offeror’s proposed financing shall not be acceptable if it does not conform to the following limitations:

(1) Delivery payments shall be made only for supplies delivered and accepted, or services rendered and accepted in accordance with the payment terms of this contract;

(2) Contract financing payments shall not exceed 15 percent of the contract price in advance of any performance of work under the contract;

(3) The terms and conditions of the contract financing must be appropriate or customary in the commercial marketplace; and

(4) The terms and conditions of the contract financing must be in the best interests of the United States.
(d) The offeror’s proposal of financing terms shall include the following:

(1) The proposed contractual language describing the contract financing (see FAR 22.202-2 for appropriate definitions of types of payments); and

(2) A listing of the earliest date and greatest amount at which each contract financing itemized and totaled. The offeror’s listing shall include the interest rate and delivery schedule specified elsewhere in this solicitation.

(End of provision)

[60 FR 49718, Sept. 26, 1995]

52.232-32 Performance-Based Payments.

As prescribed in 32.1005, insert the following clause:

PERFORMANCE-BASED PAYMENTS (JAN 2008)

(a) Amount of payments and limitations on payments. Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract’s description of the basis for payment.

(b) Contractor request for performance-based payment. The contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Contractor’s request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.

(c) Approval and payment of requests. (1) The contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contracting Officer shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contracting Officer may, at any time, require the contractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved requests on the day after receipt of the request for performance-based payment by the designated payment office. However, the designated payment office is not required to provide payment if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an event or performance criterion, or into any of the conditions listed in paragraph (a) of this clause, or into the Contractor certification. The payment period will not begin until the Contracting Officer approves the request.

(3) The approval by the Contracting Officer of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

(d) Liquidation of performance-based payments. (1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

(2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the contractor shall repay to the Government the excess. Unless otherwise determined by the Contracting Officer, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

(e) Reduction or suspension of performance-based payments. The Contracting Officer may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence of any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract
(which includes paragraphs (b) and (i) of this clause).

(2) Performance of this contract is endangered by the Contractor’s (i) failure to make progress, or (ii) unsatisfactory financial condition.

(3) The Contractor is delinquent in payment of any subcontract or supplier under this contract in the ordinary course of business.

(f) Title. (1) Title to the property described in this paragraph (f) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this contract, for property acquired or produced before that date. Otherwise vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) Property, as used in this clause, includes all of the following described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;

(iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (f)(2)(i) of this clause; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract (e.g., the termination or special tooling clauses) shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract, without requesting the Contracting Officer’s approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Contracting Officer.

(5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor shall obtain the Contracting Officer’s advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all performance-based payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(g) Risk of loss. Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. If any property is damaged, lost, stolen, or destroyed, the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(h) Records and controls. The Contractor shall maintain records and controls adequate for administration of this clause. The Contractor shall have no entitlement to performance-based payments during any time the Contractor’s records or controls are determined by the Contracting Officer to be inadequate for administration of this clause.

(1) Reports and Government access. The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Contractor shall give the Government reasonable opportunity to examine and verify the Contractor’s records and to examine and verify the Contractor’s performance of this contract for administration of this clause.

(1) Special terms regarding default. If this contract is terminated under the Default clause, (1) the Contractor shall, on demand, repay to the Government the amount of unliquidated performance-based payments, and (2) title shall vest in the Contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the
Federal Acquisition Regulation 52.232–33

Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.

(k) Reservation of rights. (1) No payment or release of funds under this clause shall (i) excuse the Contractor from performance of obligations under this contract, or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government’s rights and remedies under this clause (i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract, and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government. A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (m) of this clause.

As prescribed in 32.1110(a)(1), insert the following clause:

PAYMENT BY ELECTRONIC FUNDS TRANSFER—CENTRAL CONTRACTOR REGISTRATION.

As prescribed in 32.1110(a)(1), insert the following clause:

PAYMENT BY ELECTRONIC FUNDS TRANSFER—CENTRAL CONTRACTOR REGISTRATION (OCT 2003)

(a) Method of payment. (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term EFT refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) Contractor’s EFT information. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 200. The rules governing Federal payments through the Federal Reserve System are contained in 31 CFR part 210.

(d) Suspension of payment. If the Contractor’s EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the
52.232-34 Payment by Electronic Funds Transfer—Other Than Central Contractor Registration

As prescribed in 32.1110(a)(2), insert the following clause:

PAYMENT BY ELECTRONIC FUNDS TRANSFER—OTHER THAN CENTRAL CONTRACTOR REGISTRATION (MAY 1999)

(a) Method of payment. (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(2) of this clause. As used in this clause, the term “EFT” refers to the funds transfer and may include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend payment due dates until such time as the Government makes payment by EFT (see paragraph (b) of this clause).

(b) Mandatory submission of Contractor’s EFT information. (1) The Contractor is required to provide the Government with the information required to make payment by EFT (see paragraph (j) of this clause). The Contractor shall provide this information directly to the office designated in this contract to receive that information (hereafter: “designated office”) by—

[the Contracting Officer shall insert date, days after]
award, days before first request, the date specified for receipt of offers if the provision at 52.232-38 is utilized, or “concurrent with first request” as prescribed by the head of the agency, then insert “no later than 15 days prior to submission of the first request for payment”). If not otherwise specified in this contract, the payment office is the designated office for receipt of the Contractor’s EFT information. If more than one designated office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated office(s).

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the designated office. However, EFT information supplied to a designated office shall be applicable only to contracts that identify that designated office as the office to receive EFT information for that contract.

(c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of payment. (1) The Government is not required to make any payment under this contract until after receipt, by the designated office, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor’s request for suspension shall extend the due date for payment by the number of days of the suspension.

(e) Liability for uncompleted or erroneous transfers. (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor’s EFT information incorrectly, the Government remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor’s EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provisions of paragraph (d) shall apply.

(f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information provided by the Contractor’s financial agent.

(i) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does
not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address in the contract.

(j) EFT information. The Contractor shall provide the following information to the designated office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.

(1) The contract number (or other procurement identification number).

(2) The Contractor’s name and remittance address, as stated in the contract(s).

(3) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the Contractor’s financial agent.

(5) The Contractor’s account number and the type of account (checking, saving, or lockbox).

(b) The Contractor shall send all EFT information, and any changes to EFT information to the office designated in paragraph (c) of this clause. The Government need not use any EFT information sent to any office other than that designated in paragraph (c).

(c) Designated Office:

Name:

Mailing Address:

Person to Contact:

Telephone Number:

Electronic Address:

(End of clause)

[64 FR 10544, Mar. 4, 1999]

52.232–36 Payment by Third Party.

As prescribed in 32.1110(d), insert the following clause:

PAYMENT BY THIRD PARTY (MAY 1999)

(a) General. The Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the Government, in accordance with the terms of this clause. The third party and, if applicable, the particular Governmentwide commercial purchase card to be used are identified elsewhere in this contract.

(b) Contractor payment request. In accordance with these clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, other payment requests, or as provided in other clauses providing for payment to the Contractor, the Contractor shall make such payment requests through a charge to the Government account with the third party, at the time and for the amount due in accordance with the terms of this contract.

(c) Payment. The Contractor and the third party shall agree that payments due under this contract shall be made upon submittal of payment requests to the third party in accordance with the terms and conditions of an agreement between the Contractor, the Contractor’s financial agent (if any), and the third party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the third party under this clause are not
payments made by the Government and are not subject to the Prompt Payment Act or any implementation thereof in this contract.

(d) Documentation. Documentation of each charge against the Government’s account shall be provided to the Contracting Officer upon request.

(e) Assignment of claims. Notwithstanding any other provision of this contract, if any payment is made under this clause, then no payment under this contract shall be assigned under the provisions of the assignment of claims terms of this contract or the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15.

(f) Other payment terms. The other payment terms of this contract shall govern the content and submission of payment requests. If any clause requires information or documents in or with the payment request, that is not provided in the third party agreement referenced in paragraph (c) of this clause, the Contractor shall obtain instructions from the Contracting Officer before submitting such a payment request.

(End of clause)

52.232–37 Multiple Payment Arrangements.

As prescribed in 32.1110(e), insert the following clause:

MULTIPLE PAYMENT ARRANGEMENTS (MAY 1999)

This contract or agreement provides for payments to the Contractor through several alternative methods. The applicability of specific methods of payment and the designation of the payment office(s) are either stated—

(a) Elsewhere in this contract or agreement; or

(b) In individual orders placed under this contract or agreement.

(End of clause)

52.232–38 Submission of Electronic Funds Transfer Information with Offer.

As prescribed in 32.1110(g), insert the following provision:

SUBMISSION OF ELECTRONIC FUNDS TRANSFER INFORMATION WITH OFFER (MAY 1999)

The offeror shall provide, with its offer, the following information that is required to make payment by electronic funds transfer (EFT) under any contract that results from this solicitation. This submission satisfies the requirement to provide EFT information under paragraphs (b)(1) and (j) of the clause at 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration.

(1) The solicitation number (or other procurement identification number).

(2) The offeror’s name and remittance address, as stated in the offer.

(3) The signature (manual or electronic, as appropriate), title, and telephone number of the offeror’s official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the offeror’s financial agent.

(5) The offeror’s account number and the type of account (checking, savings, or lockbox).

(6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the offeror’s financial agent.

(7) If applicable, the offeror shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the offeror’s financial agent is not directly online to the Fedwire and, therefore, not the receiver of the wire transfer payment.

(End of provision)

52.233–1 Disputes.

As prescribed in 33.215, insert the following clause:

DISPUTES (JUL 2002)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(d)(2) The Contractor shall provide the certification specified in paragraph (d)(2)(i) of this clause when submitting any claim exceeding $100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

(c) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of $100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer’s decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contracting Officer for a written decision. A claim by the Contractor shall be final unless the Contractor appeals or files a suit as provided in the Act.

(h) The Government shall pay interest on claims and then at the rate applicable for the period during which the Contracting Officer receives the claim and at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

Alternate I (DEC 1991). As prescribed in 33.215, substitute the following paragraph (i) for paragraph (i) of the basic clause:

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

52.233–2  Service of Protest.

As prescribed in 33.106(a), insert the following provision:

Service of Protest (SEP 2006)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from . [Contracting Officer designate the official or location where a protest may be served on the Contracting Officer.]

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

52.233–3 Protest After Award.

As prescribed in 33.106(b), insert the following clause:

Protest After Award (AUG 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work
Federal Acquisition Regulation

52.234-1

The following clauses are in addition to, or in lieu of, the provisions of the Federal Acquisition Regulation (FAR) contained in part 52:

(a)(2) the words “the Termination clause of this contract” for the words “the Default, or the Termination for Convenience of the Government clause of this contract.” In paragraph (b) substitute the words “an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected” for the words “an equitable adjustment in the delivery schedule or contract price, or both.”

52.234-4 Applicable Law for Breach of Contract Claim.

As prescribed in 33.215(b), insert the following clause:

APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)

United States law will apply to resolve any claim of breach of this contract.

(End of clause)

52.234-1 Industrial Resources Developed Under Defense Production Act Title III.

As prescribed at 34.104, insert the following clause:

INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (DEC 1994)

(a) Definitions.

Title III industrial resource means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) established or maintained under the authority of Title III, Defense Production Act (50 U.S.C. App. 2091–2093).

Title III project contractor means a Contractor that has received assistance for the development or manufacture of an industrial resource under 50 U.S.C. App. 2091–2093, Defense Production Act.

(b) The Contractor shall refer any request from a Title III project contractor for testing and qualification of a Title III industrial resource to the Contracting Officer.

(c) Upon the direction of the Contracting Officer, the Contractor shall test Title III industrial resources for qualification. The Contractor shall provide the test results to the

Alternate I (JUN 1985). As prescribed in 33.106(b), substitute in paragraph (a)(2) the words “the Termination clause of this contract” for the words “the Default, or the Termination for Convenience of the Government clause of this contract.” In paragraph (b) substitute the words “an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected” for the words “an equitable adjustment in the delivery schedule or contract price, or both.”

50 FR 25681, June 20, 1985, as amended at 54 FR 29284, July 11, 1989; 60 FR 48331, 48276, Sept. 18, 1995; 61 FR 41472, Aug. 8, 1996

[50 FR 59701, Oct. 5, 2004]

50.233-4 Applicable Law for Breach of Contract Claim.

As prescribed in 33.215(b), insert the following clause:

APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)

United States law will apply to resolve any claim of breach of this contract.

(End of clause)

[69 FR 39701, Oct. 5, 2004]

50.234-1 Industrial Resources Developed Under Defense Production Act Title III.

As prescribed at 34.104, insert the following clause:

INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (DEC 1994)

(a) Definitions.

Title III industrial resource means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) established or maintained under the authority of Title III, Defense Production Act (50 U.S.C. App. 2091–2093).

Title III project contractor means a Contractor that has received assistance for the development or manufacture of an industrial resource under 50 U.S.C. App. 2091–2093, Defense Production Act.

(b) The Contractor shall refer any request from a Title III project contractor for testing and qualification of a Title III industrial resource to the Contracting Officer.

(c) Upon the direction of the Contracting Officer, the Contractor shall test Title III industrial resources for qualification. The Contractor shall provide the test results to the

Alternate I (JUN 1985). As prescribed in 33.106(b), substitute in paragraph (a)(2) the words “the Termination clause of this contract” for the words “the Default, or the Termination for Convenience of the Government clause of this contract.” In paragraph (b) substitute the words “an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected” for the words “an equitable adjustment in the delivery schedule or contract price, or both.”

50 FR 25681, June 20, 1985, as amended at 54 FR 29284, July 11, 1989; 60 FR 48331, 48276, Sept. 18, 1995; 61 FR 41472, Aug. 8, 1996

[50 FR 59701, Oct. 5, 2004]
Defense Production Act Office, Title III Program, located at Wright Patterson Air Force Base, Ohio 45433–7739.

(d) When the Contracting Officer modifies the contract to direct testing pursuant to this clause, the Government will provide the Title III industrial resource to be tested and will make an equitable adjustment in the contract for the costs of testing and qualification of the Title III industrial resource.

(e) The Contractor agrees to insert the substance of this clause, including paragraph (e), in every subcontract issued in performance of this contract.

(End of clause)

[59 FR 67048, Dec. 28, 1994; 60 FR 5870, Jan. 31, 1995]

52.234–2 Notice of Earned Value Management System—Pre-Award IBR.

As prescribed in 34.203(a) use the following provision:

NOTICE OF Earned Value MANAGEMENT SYSTEM—Pre-Award IBR (JUL 2006)

(a) The offeror shall provide documentation that the Cognizant Federal Agency has determined that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard –748 (current version at time of solicitation).

(b) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS guidelines.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contracts;

(ii) Distinguish between the offeror’s existing management system and modifications proposed to meet the guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for administration of the guidelines, as applied to subcontractors; and

(v) Provide documentation describing the process and results of any third-party or self-evaluation of the system’s compliance with the EVMS guidelines.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review and approve the offeror’s plan for an EVMS before contract award.

(4) The offeror’s EVMS plan must provide milestones that indicate when the offeror anticipates that the EVMS system will be compliant with the ANSI/EIA Standard – 748 guidelines.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected subject to the guidelines. The prime Contractor and the Government shall agree to subcontractors selected for application of the EVMS guidelines.

(d) The Government will conduct an Integrated Baseline Review (IBR), as designated by the agency, prior to contract award. The objective of the IBR is for the Government and the Contractor to jointly assess technical areas, such as the Contractor’s planning, to ensure complete coverage of the contract requirements, logical scheduling of the work activities, adequate resources, methodologies for earned value (budgeted cost for work performed (BCWP)), and identification of inherent risks.

(End of provision)

[71 FR 38246, July 5, 2006]

52.234–3 Notice of Earned Value Management System—Post Award IBR.

As prescribed in 34.203(b) use the following provision:

NOTICE OF Earned Value MANAGEMENT SYSTEM—Post Award IBR (JUL 2006)

(a) The offeror shall provide documentation that the Cognizant Federal Agency has determined that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard –748 (current version at time of solicitation).

(b) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS guidelines.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contracts;

(ii) Distinguish between the offeror’s existing management system and modifications proposed to meet the guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for administration of the guidelines, as applied to subcontractors; and

(v) Provide documentation describing the process and results of any third-party or self-evaluation of the system’s compliance with the EVMS guidelines.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The offeror’s EVMS plan must provide milestones that indicate when the offeror anticipates that the EVMS system will be compliant with the ANSI/EIA Standard – 748 guidelines.

(c) Offerors shall identify the major subcontractors, major subcontracted effort if major subcontractors have not been selected subject to the guidelines. The prime Contractor and the Government shall agree to subcontractors selected for application of the EVMS guidelines.

(d) The Government will conduct an Integrated Baseline Review (IBR), as designated by the agency, prior to contract award. The objective of the IBR is for the Government and the Contractor to jointly assess technical areas, such as the Contractor’s planning, to ensure complete coverage of the contract requirements, logical scheduling of the work activities, adequate resources, methodologies for earned value (budgeted cost for work performed (BCWP)), and identification of inherent risks.
(3) The Government will review and approve the offeror’s plan for an EVMS before contract award.

(4) The offeror’s EVMS plan must provide milestones that indicate when the offeror anticipates that the EVM system will be compliant with the ANSI/EIA Standard - 748 guidelines.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the guidelines. The prime Contractor and the Government shall agree to subcontractors selected for application of the EVMS guidelines.

(End of provision)

[71 FR 38246, July 5, 2006]

52.234–4 Earned Value Management System.

As prescribed in 34.203(c), insert the following clause:

EARNED VALUE MANAGEMENT SYSTEM (JUL 2006)

(a) The Contractor shall use an earned value management system (EVMS) that has been determined by the Cognizant Federal Agency (CFA) to be compliant with the guidelines in ANSI/EIA Standard - 748 (current version at time of award) to manage this contract. If the Contractor’s current EVMS has not been determined compliant at the time of award, see paragraph (b) of this clause. The Contractor shall submit reports in accordance with the requirements of this contract.

(b) If, at the time of award, the Contractor’s EVM System has not been determined by the CFA as complying with EVMS guidelines or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in ANSI/EIA Standard - 748 (current version at time of award), the Contractor shall—

(1) Apply the current system to the contract; and

(2) Take necessary actions to meet the milestones in the Contractor’s EVMS plan approved by the Contracting Officer.

(c) The Government will conduct an Integrated Baseline Review (IBR). If a pre-award IBR has not been conducted, a post award IBR shall be conducted as early as practicable after contract award.

(d) The Contracting Officer may require an IBR at—

(1) Exercise of significant options; or

(2) Incorporation of major modifications.

(e) Unless a waiver is granted by the CFA, Contractor proposed EVMS changes require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the CFA, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

(f) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS conforms, and continues to conform, with the performance criteria referenced in paragraph (a) of this clause.

(g) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause: [Insert list of applicable subcontractors.]

(End of clause)

[71 FR 38246, July 5, 2006]

52.235 [Reserved]

52.236–1 Performance of Work by the Contractor.

As prescribed in 36.501(b), insert the following clause: [Complete the clause by inserting the appropriate percentage consistent with the complexity and magnitude of the work and customary or necessary specialty subcontracting (see 36.501(a)).]

PERFORMANCE OF WORK BY THE CONTRACTOR (APR 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least 75 percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

(End of clause)


52.236–2 Differing Site Conditions.

As prescribed in 36.502, insert the following clause:
52.236–3 Differing Site Conditions (APR 1984)

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

(End of clause)


52.236–4 Physical Data.

As prescribed in 36.504, insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and physical data (e.g., test borings, hydrographic, weather conditions data) will be furnished or made available to offerors. All information to be furnished or made available to offerors before award that pertains to the performance of the work should be identified in the clause. When subparagraphs are not applicable they may be deleted.

PHYSICAL DATA (APR 1984)

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by insert a description of investigational methods used, such as surveys, auger borings, core borings, test pits, probings, test tunnels.

(b) Weather conditions [insert a summary of weather records and warnings].
Federal Acquisition Regulation

52.236–5 Material and Workmanship.

As prescribed in 36.505, insert the following clause:

MATERIAL AND WORKMANSHIP (APR 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer’s approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer’s approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor’s expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

(End of clause)
employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

(End of clause)

52.236–9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.

As prescribed in 36.509, insert the following clause:

PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

(End of clause)

52.236–10 Operations and Storage Areas.

As prescribed in 36.510, insert the following clause:

OPERATIONS AND STORAGE AREAS (APR 1984)

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor’s performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

(End of clause)

52.236–11 Use and Possession Prior to Completion.

As prescribed in 36.511, insert the following clause:

USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of
work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government’s possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government’s possession or use, notwithstanding the terms of the clause in this contract entitled ‘Permits and Responsibilities.’ If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

(End of clause)

52.236–12 Cleaning Up.

As prescribed in 36.512, insert the following clause:

CLEANING UP (APR 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

(End of clause)

52.236–13 Accident Prevention.

As prescribed in 36.513, insert the following clause:

ACCIDENT PREVENTION (NOV 1991)

(a) The Contractor shall provide and maintain work environments and procedures which will (1) safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Government operations and activities; (2) avoid interruptions of Government operations and delays in project completion dates; and (3) control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall—

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR part 1926 and 29 CFR part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385–1–1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor’s representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(End of clause)
to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

[56 FR 55376, Oct. 25, 1991]

52.236–14 Availability and Use of Utility Services.

As prescribed in 36.514, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated, the contract is to be performed on Government sites when the contracting officer decides (a) that the existing utility system is adequate for the needs of both the Government and the contractor, and (b) furnishing it is in the Government’s interest. When this clause is used, the contracting officer shall list the available utilities in the contract.

AVAILABILITY AND USE OF UTILITY SERVICES
(APR 1984)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

(End of clause)

52.236–15 Schedules for Construction Contracts.

As prescribed in 36.515, insert the following clause:

SCHEDULES FOR CONSTRUCTION CONTRACTS
(APR 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor’s right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of clause)

52.236–16 Quantity Surveys.
As prescribed in 36.516, the contracting officer may insert the following clause in solicitations and contracts when a fixed-price construction contract providing for unit pricing of items and for payment based on quantity surveys is contemplated:

**QUANTITY SURVEYS (APR 1984)**

(a) Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.

(b) The Government shall conduct the original and final surveys and make the computations based on them. The Contractor shall conduct the surveys for any periods for which progress payments are requested and shall make the computations based on these surveys. All surveys conducted by the Contractor shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance.

(c) Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, who shall use them as necessary to determine the amount of progress payments. The Contractor shall retain copies of all such material furnished to the Contracting Officer.

(End of clause)

**Alternate I (APR 1984).** If it is determined at a level above that of the contracting officer that it is impracticable for Government personnel to perform the original and final surveys, and the Government wishes the contractor to perform these surveys, substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Contractor shall conduct the original and final surveys and surveys for any periods for which progress payments are requested. All these surveys shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance. The Government shall make such computations as are necessary to determine the quantities of work performed or finally in place. The Contractor shall make the computations based on the surveys for any periods for which progress payments are requested.

(End of clause)

52.236–17 Layout of Work.
As prescribed in 36.517, insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and use of this clause is appropriate due to a need for accurate work layout and for siting verification during work performance:

**LAYOUT OF WORK (APR 1984)**

The Contractor shall lay out its work from Government-established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

(End of clause)

52.236–18 Work Oversight in Cost-Reimbursement Construction Contracts.
As prescribed in 36.518, insert the following clause in solicitations and contracts when cost-reimbursement construction contracts are contemplated:

**WORK OVERSIGHT IN COST-REIMBURSEMENT CONSTRUCTION CONTRACTS (APR 1984)**

The extent and character of the work to be done by the Contractor shall be subject to the general supervision, direction, control, and approval of the Contracting Officer.

(End of clause)

52.236–19 Organization and Direction of the Work.
As prescribed in 36.519, insert the following clause in solicitations and contracts when a cost-reimbursement construction contract is contemplated:

**ORGANIZATION AND DIRECTION OF THE WORK (APR 1984)**

(a) When this contract is executed, the Contractor shall submit to the Contracting
(End of clause)

52.236-20 [Reserved]

52.236-21 Specifications and Drawings for Construction.

As prescribed in 36.521, insert the following clause:

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of discrepancy between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words directed, required, ordered, designated, prescribed, or words of like import are used, it shall be understood that the direction, requirement, order, designation, or prescription, of the Contracting Officer is intended and similarly the words approved, acceptable, satisfactory, or words of like import shall mean approved by, or acceptable to, or satisfactory to the Contracting Officer, unless otherwise expressly stated.

(c) Where as shown, as indicated, as detailed, or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word furnished as used herein shall be understood to mean provide complete in place, that is furnished and installed.

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereof as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor’s approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government’s reasons therefor. Any work done before such approval shall be at the Contractor’s risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.
Federal Acquisition Regulation

52.236–23

Responsibility of the Architect-Engineer Contractor.

As prescribed in 36.609–2(b), insert the following clause:

RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR (APR 1984)

(a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

(b) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Contractor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Contractor's negligent performance of any of the services furnished under this contract.

(c) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

(d) If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
52.236–24 Work Oversight in Architect-Engineer Contracts.

As prescribed in 36.609–3, insert the following clause:

WORK OVERSIGHT IN ARCHITECT-ENGINEER CONTRACTS (APR 1984)

The extent and character of the work to be done by the Contractor shall be subject to the general oversight, supervision, direction, control, and approval of the Contracting Officer.

(End of clause)

52.236–25 Requirements for Registration of Designers.

As prescribed in 36.609–4, insert the following clause:

REQUIREMENTS FOR REGISTRATION OF DESIGNERS (JUN 2003)

Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

(End of clause)

52.236–26 Preconstruction Conference.

As prescribed in 36.522, insert the following clause:

PRECONSTRUCTION CONFERENCE (FEB 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer’s notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

(End of clause)

52.236–27 Site Visit (Construction).

As prescribed in 36.523, insert a provision substantially the same as the following:

SITE VISIT (CONSTRUCTION) (FEB 1995)

(a) The clauses at 52.236–2, Differing Site Conditions, and 52.236–3, Site Investigation and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) Site visits may be arranged during normal duty hours by contacting:

Name:
Address:
Telephone:

(End of provision)

Alternate I (FEB 1995). If an organized site visit will be conducted, substitute a paragraph substantially the same as the following for paragraph (b) of the basic provision:

(b) An organized site visit has been scheduled for—

[Insert date and time]

(c) Participants will meet at—

[Insert location]

(End of provision)

52.236–28 Preparation of Proposals—Construction.

As prescribed in 36.520, insert the following provision:

PREPARATION OF PROPOSALS—CONSTRUCTION (OCT 1997)

(a) Proposals must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing a proposal must initial each erasure or change appearing on any proposal form.

(b) The proposal form may require offerors to submit proposed prices for one or more items on various bases, including—

(1) Lump sum price;
(2) Alternate prices;
(3) Units of construction; or
(4) Any combination of paragraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires submission of a proposal on all items, failure to do so
may result in the proposal being rejected without further consideration. If a proposal on all items is not required, offerors should insert the words “no proposal” in the space provided for any item on which no price is submitted.

(d) Alternate proposals will not be considered unless this solicitation authorizes their submission.

(End of provision)


52.237–1 Site Visit.

As prescribed in 37.110(a), insert the following provision in solicitations for services to be performed on Government installations, unless the solicitation is for construction:

SITE VISIT (APR 1984)

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

(End of provision)


As prescribed in 37.110(b), insert the following clause in solicitations and contracts for services to be performed on Government installations, unless a construction contract is contemplated:

PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor’s failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

(End of clause)

52.237–3 Continuity of Services.

As prescribed in 37.110(c), insert the following clause:

CONTINUITY OF SERVICES (JAN 1991)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer’s written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer’s approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

(End of clause)


52.237–4 Payment by Government to Contractor.

As prescribed in 37.304(a), insert the following clause in solicitations and contracts solely for dismantling, demolition, or removal of improvements whenever the contracting officer determines that the Government shall make payment to the contractor in addition
to any title to property that the contractor may receive under the contract:

PAYMENT BY GOVERNMENT TO CONTRACTOR
(APR 1984)

(a) In ___ [insert full if Alternate I is used; otherwise insert partial] consideration of the performance of the work called for in the Schedule, the Government will pay to the Contractor ___ [fill in amount].

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. Except as provided in paragraph (c) below, in making progress payments the Contracting Officer shall retain 10 percent of the estimated payment until final completion and acceptance of the contract work. However, if the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer may authorize such payment in full, without retaining a percentage. Also, on completion and acceptance of each unit or division for which the price is stated separately, the Contracting Officer may authorize full payment for that unit or division without retaining a percentage.

(c) When the work is substantially completed, the Contracting Officer shall retain an amount considered adequate for the protection of the Government and, at the Contracting Officer’s discretion, may release all or a portion of any excess amount.

(d) In further consideration of performance, the contractor shall receive title to all property to be dismantled or demolished that is not specifically designated as being retained by the Government. The title shall vest in the contractor immediately upon the Government’s issuing the notice of award, or if a performance bond is to be furnished after award, upon the Government’s issuance of a notice to proceed with the work. The Government shall not be responsible for the condition of, or any loss or damage to, the property. If the contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition to the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(e) Upon completion and acceptance of all work and receipt of a properly executed voucher, the Government shall make final payment of the amount due the contractor under this contract. If requested, the Contractor shall release all claims against the Government arising under this contract, other than any claims the Contractor specifically excepts, in stated amounts, from operation of this release.

Alternate I (APR 1984). If the contracting officer determines that the Government shall retain all material resulting from the dismantling or demolition work, delete paragraph (d) from the basic clause and renumber the remaining paragraphs.

52.237-5 Payment by Contractor to Government.

As prescribed in 37.304(b), insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements whenever the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due to the Government, except if the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments and the Government to transfer title to the contractor for increments of property only upon receipt of those payments:

PAYMENT BY CONTRACTOR TO GOVERNMENT
(APR 1984)

(a) The Contractor shall receive title to all property to be dismantled, demolished, or removed under this contract and not specifically designated in the Schedule as being retained by the Government. The title shall vest in the Contractor immediately upon the Government’s issuing the notice of award, or if a performance bond is to be furnished, upon the Government’s issuing a notice to proceed with the work. The Government shall not be responsible for the condition of, or any loss or damage to, the property.

(b) The Contractor shall promptly remove from the site all property acquired by the Contractor. The Government shall not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition to the granting of the permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(c) The Contractor shall perform the work called for under this contract and within days of receipt of notice of award, unless otherwise provided in the Schedule and before proceeding with the work, shall pay ___ [fill in amount]. Checks shall be made payable
Federal Acquisition Regulation

52.237–6 Incremental Payment by Contractor to Government.

As prescribed in 37.304(c), insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements (a) if the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due the Government, and (b) if the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments, and for the Government to transfer title to the contractor for increments of property, only upon receipt of those payments:

INCREMENTAL PAYMENT BY CONTRACTOR TO GOVERNMENT (APR 1984)

(a) The Contractor shall perform the work called for under this contract and within [fill in amount]. Thereafter, the Contractor shall make payment to the Government in the amount and frequency specified in the Schedule. Checks shall be made payable to the office designated in the contract and shall be forwarded to the Contracting Officer.

(b) Upon the Government’s receipt of each increment of payment, the Contractor shall receive title to such property as the Contracting Officer determines to be fair and reasonable for that increment of payment. Upon receipt of the Contractor’s final payment, all title that has not passed to the Contractor shall vest in the Contractor, unless specifically designated in the Schedule as being retained by the Government. The Government shall not be responsible for the condition of, or any loss or damage to, the property.

(c) The Contractor shall promptly remove from the site all property acquired by the Contractor. The Government will not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(End of clause)

52.237–7 Indemnification and Medical Liability Insurance.

As prescribed in 37.403, insert the following clause:

INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (JAN 1997)

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example, the Contractor’s professional medical judgment, diagnosis, or specific medical treatments. The Contractor shall be solely liable for and expressly agrees to indemnify the Government with respect to any liability producing acts or omissions by it or by its employees or agents. The Contractor shall maintain during the term of this contract liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence:

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of its insurability concerning the medical liability insurance required by paragraph (a) of this clause.

(c) Liability insurance may be on either an occurrence basis or a claims-made basis. If the policy is on a claims-made basis, an extended reporting endorsement (tail) for a period of not less than 3 years after the end of the contract term must also be provided.

(d) Evidence of insurance documenting the required coverage for each health care provider who will perform under this contract shall be provided to the Contracting Officer prior to the commencement of services under this contract. If the insurance is on a claims-made basis and evidence of an extended reporting endorsement is not provided prior to the commencement of services, evidence of such endorsement shall be provided to the Contracting Officer prior to the expiration of this contract. Final payment under this contract shall be withheld until evidence of the extended reporting endorsement is provided to the Contracting Officer.

(e) The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government’s interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. If
during the performance period of the contract the Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to the limits specified in paragraph (a) of this clause, for the entire period of the contract, either under the new policy, or a combination of old and new policies.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract for health care services and shall require such subcontractors to provide evidence of and maintain insurance in accordance with paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

52.237–8 Restriction on Severance Payments to Foreign Nationals.

As prescribed in 37.113–2(a), use the following provision:

RESTRICTION ON SEVERANCE PAYMENTS TO FOREIGN NATIONALS (AUG 2003)

(a) The Federal Acquisition Regulation (FAR), at 31.205-6(g)(6), limits the cost allowability of severance payments to foreign nationals employed under a service contract performed outside the United States unless the agency grants a waiver pursuant to FAR 37.113–1 before contract award.

(b) In making the determination concerning the granting of a waiver, the agency will determine that—

(1) The application of the severance pay limitations to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for (i) members of the armed forces stationed or deployed outside the United States, or (ii) employees of an executive agency posted outside the United States;

(2) The Contractor has taken (or has established plans to take) appropriate actions within its control to minimize the amount and number of incidents of the payment of severance pay to employees under the contract who are foreign nationals; and

(3) The payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract, or necessary to comply with a collective bargaining agreement.

(End of provision)

52.237–9 Waiver of Limitation on Severance Payments to Foreign Nationals.

As prescribed in 37.113–2(b), use the following clause:

WAIVER OF LIMITATION ON SEVERANCE PAYMENTS TO FOREIGN NATIONALS (AUG 2003)

(a) Pursuant to 10 U.S.C. 2324(e)(3)(A) or 41 U.S.C. 256(e)(2)(A), as applicable, the cost allowability limitations in FAR 31.205-6(g)(6) are waived.

(b) This clause may be incorporated into subcontracts issued under this contract, if approved by the Contracting Officer.

(End of clause)

52.237–10 Identification of Uncompensated Overtime.

As prescribed in 37.115–3, insert the following provision:

IDENTIFICATION OF UNCOMPENSATED OVERTIME (OCT 1997)

(a) Definitions. As used in this provision—

Uncompensated overtime means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

Uncompensated overtime rate is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at $20 per hour would be converted to an uncompensated overtime rate of $17.78 per hour ($20.00 x 40 divided by 45 = $17.78).

(b) For any proposed hours against which an uncompensated overtime rate is applied, the offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, by labor category at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.
(c) The offeror’s accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.

(e) The offeror shall include a copy of its policy addressing uncompensated overtime with its proposal.

(End of provision)

52.237–11 Accepting and Dispensing of $1 Coin.
As prescribed in 37.116–2, insert the following clause:

ACCEPTING AND DISPENSING OF $1 COIN (SEP 2008)

(a) This clause applies to service contracts that involve business operations conducted in U.S. coin and currency, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States. All such business operations must be compliant with the requirements in paragraphs (b) and (c) of this clause on and after January 1, 2008.

(b) All business operations conducted under this contract that involve coins or currency, including vending machines, shall be fully capable of—

(1) Accepting $1 coins in connection with such operations; and

(2) Dispensing $1 coins in connection with such operations, unless the vending machine does not receive currency denominations greater than $1.

(c) The Contractor shall ensure that signs and notices are displayed denoting the capability of accepting and dispensing $1 coins with business operations on all premises where coins or currency are accepted or dispensed, including on each vending machine.

(End of clause)

52.238 [Reserved]

52.239–1 Privacy or Security Safeguards.
As prescribed in 39.107, insert a clause substantially the same as the following:

PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)

(a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer’s written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.

(b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor’s facilities, installations, technical capabilities, operations, documentation, records, and databases.

(c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

(End of clause)

52.240 [Reserved]

52.241 Utility Services Provisions and Clauses.

52.241–1 Electric Service Territory Compliance Representation.
As prescribed in 41.501(b), insert a provision substantially the same as the following:

ELECTRIC SERVICE TERRITORY COMPLIANCE REPRESENTATION (MAY 1999)

(a) Section 8093 of Public Law 100–202 generally requires purchases of electricity by any department, agency, or instrumentality of the United States to be consistent with State law governing the provision of electric utility service, including State utility commission rulings and electric utility franchises or service territories established pursuant to State statute, State regulation, or State-approved territorial agreements.

(b) By signing this offer, the offeror represents that this offer to sell electricity is consistent with Section 8093 of Public Law 100–202.

(c) Upon request of the Contracting Officer, the offeror shall submit supporting legal and factual rationale for this representation.

(End of provision)
52.241–2 Order of Precedence—Utilities.

As prescribed in 41.501(c)(1), insert a clause substantially the same as the following:

ORDER OF PRECEDENCE—UTILITIES (FEB 1995)

In the event of any inconsistency between the terms of this contract (including the specifications and any rate schedule, rider, or exhibit incorporated in this contract by reference or otherwise, or any of the Contractor’s rules and regulations, the terms of this contract shall control.

(End of clause)

[59 FR 67023, Dec. 28, 1994]

52.241–3 Scope and Duration of Contract.

As prescribed in 41.501(c)(2), insert a clause substantially the same as the following:

SCOPE AND DURATION OF CONTRACT (FEB 1995)

(a) For the period [insert period of service], the Contractor agrees to furnish and the Government agrees to purchase [insert type of service] utility service in accordance with the applicable tariff(s), rules, and regulations as approved by the applicable governing regulatory body and as set forth in the contract.

(b) It is expressly understood that neither the Contractor nor the Government is under any obligation to continue any service under the terms and conditions of this contract beyond the expiration date.

(c) The Contractor shall provide the Government with one complete set of rates, terms, and conditions of service which are in effect as of the date of this contract and any subsequently approved rates.

(d) The Contractor shall be paid at the applicable rate(s) under the tariff and the Government shall be liable for the minimum monthly charge, if any, specified in this contract commencing with the period in which service is initially furnished and continuing for the term of this contract. Any minimum monthly charge specified in this contract shall be equitably prorated for the periods in which commencement and termination of this contract become effective.

(End of clause)

[59 FR 67023, Dec. 28, 1994]

52.241–4 Change in Class of Service.

As prescribed in 41.501(c)(3), insert a clause substantially the same as the following:

CHANGE IN CLASS OF SERVICE (FEB 1995)

(a) In the event of a change in the class of service, such service shall be provided at the Contractor’s lowest available rate schedule applicable to the class of service furnished.

(b) Where the Contractor does not have on file with the regulatory body approved rate schedules applicable to services provided, no clause in this contract shall preclude the parties from negotiating a rate schedule applicable to the class of service furnished.

(End of clause)

[59 FR 67023, Dec. 28, 1994]

52.241–5 Contractor’s Facilities.

As prescribed in 41.501(c)(4), insert a clause substantially the same as the following:

CONTRACTOR’S FACILITIES (FEB 1995)

(a) The Contractor, at its expense, unless otherwise provided for in this contract, shall furnish, install, operate, and maintain all facilities required to furnish service hereunder, and measure such service at the point of delivery specified in the Service Specifications. Title to all such facilities shall remain with the Contractor and the Contractor shall be responsible for loss or damage to such facilities, except that the Government shall be responsible to the extent that loss or damage has been caused by the Government’s negligent acts or omissions.

(b) Notwithstanding any terms expressed in this clause, the Contractor shall obtain approval from the Contracting Officer prior to any equipment installation, construction, or removal. The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to the limitations specified in this contract, a revocable permit or license to enter the service location for any proper purpose under this contract. This permit or license includes use of the site or sites agreed upon by the parties hereto for the installation, operation, maintenance, and repair of the facilities of the Contractor required to be located upon Government premises. All applicable taxes and other charges in connection therewith, together with all liability of the Contractor in construction, operation, maintenance and repair of such facilities, shall be the obligation of the Contractor.

(c) Authorized representatives of the Contractor will be allowed access to the facilities on Government premises at reasonable
Federal Acquisition Regulation

52.241–7

CHANGE IN RATES OR TERMS AND CONDITIONS OF SERVICE FOR REGULATED SERVICES.

As prescribed in 41.501(d)(1), insert a clause substantially the same as the following:

CHANGE IN RATES OR TERMS AND CONDITIONS OF SERVICE FOR REGULATED SERVICES (FEB 1995)

(a) This clause applies to the extent services furnished under this contract are subject to regulation by a regulatory body. The Contractor agrees to give * written notice of (1) the filing of an application for change in rates or terms and conditions of service concurrently with the filing of the application and (2) any changes pending with the regulatory body as of the date of contract award. Such notice shall fully describe the proposed change. If, during the term of this contract, the regulatory body having jurisdiction approves any changes, the Contractor shall forward to the Contracting Officer a copy of such changes

(b) The cost of such additional tests shall be borne by the Government if the percentage of errors is found to be not more than ____ percent slow or fast.

(c) Continuity of service and consumption. The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at each service location, but shall not be liable for damages, breach of contract or otherwise, to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the control of the Contractor, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, or other catastrophe, strikes, or failure or breakdown of transmission or other facilities. If any such failure, suspension, diminution, or other variation of service shall aggregate more than ____ hours(s) during any billing period hereunder, an equitable adjustment shall be made in the monthly billing specified in this contract (including the minimum monthly charge).

(End of clause)


52.241–6 Service Provisions.

As prescribed in 41.501(c)(5), insert a clause substantially the same as the following:

SERVICE PROVISIONS (FEB 1995)

(a) Measurement of service. (1) All service furnished by the Contractor shall be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, repaired, calibrated, and read by the Contractor at its expense. When more than a single meter is installed at a service location, the readings thereof may be billed conjunctively, if appropriate. In the event any meter fails to register (or registers incorrectly) the service furnished, the parties shall agree upon the length of time of meter malfunction and the quantity of service delivered during such period of time. An appropriate adjustment shall be made to the next invoice for the purpose of correcting such errors. However, any meter which registers not more than ____ percent slow or fast shall be deemed correct.

(b) * Meter test. (1) The Contractor, at its expense, shall periodically inspect and test Contractor-installed meters at intervals not exceeding year(s). The Government has the right to have representation during the inspection and test.

(2) At the request of the Contracting Officer, the Contractor shall make additional tests of any or all such meters in the presence of Government representatives.

(End of clause)

52.241–8 Change in Rates or Terms and Conditions of Service for Unregulated Services.

As prescribed in 41.501(d)(2), insert a clause substantially the same as the following:

CHANGE IN RATES OR TERMS AND CONDITIONS OF SERVICE FOR UNREGULATED SERVICES (FEB 1995)

(a) This clause applies to the extent that services furnished hereunder are not subject to regulation by a regulatory body.

(b) After [insert date], either party may request a change in rates or terms and conditions of service, unless otherwise provided in this contract. Both parties agree to enter in negotiations concerning such changes upon receipt of a written request detailing the proposed changes and specifying the reasons for the proposed changes.

(c) The effective date of any change shall be agreed to by the parties. The Contractor agrees that throughout the life of this contract the rates so negotiated will not be in excess of published and unpublished rates charged to any other customer of the same class under similar terms and conditions of use and service.

(d) The failure of the parties to agree upon any change after a reasonable period of time shall be a dispute under the Disputes clause of this contract.

(e) Any changes to rates, terms, or conditions as a result of such negotiations shall be made a part of this contract by the issuance of a contract modification.

(End of clause)

[59 FR 67024, Dec. 28, 1994]

52.241–9 Connection Charge.

As prescribed in 41.501(d)(3), insert a clause substantially the same as the following:

CONNECTION CHARGE (FEB 1995)

(a) Charge. In consideration of the Contractor furnishing and installing at its expense the new connection facilities described herein, the Government shall pay the Contractor a connection charge. The payment shall be in the form of progress payments, advance payments or as a lump sum, as agreed to by the parties and as permitted by applicable law. The total amount payable shall be either the estimated cost of $____, or the actual cost less the salvage value, whichever is less. As a condition precedent to final payment, the Contractor shall execute a release of any claims against the Government arising under or by the virtue of such installation.

(b) Ownership, operation, maintenance and repair of new facilities to be provided. The facilities to be supplied by the Contractor under this clause, notwithstanding the payment by the Government of a connection charge, shall be and remain the property of the Contractor and shall, at all times during the life of this contract or any renewals thereof, be operated, maintained, and repaired by the Contractor at its expense. All taxes and other charges in connection therewith, together with all liability arising out of the construction, operations, maintenance, or repair of such facilities, shall be the obligation of the Contractor.

(c) Credits. (1) The Contractor agrees to allow the Government, on each monthly bill for service furnished under this contract to the service location, a credit of %____ of the amount of each such bill as rendered until the accumulation of credits shall equal the amount of such connection charge, provided that the Contractor may at any time allow a credit up to 100 percent of the amount of each such bill.

(2) In the event the Contractor, before any termination of this contract but after completion of the facilities provided for in this
clause, serves any customer other than the Government (regardless of whether the Government is being served simultaneously, intermittently, or not at all) by means of the facilities, the Contractor shall promptly notify the Government in writing. Unless otherwise agreed by the parties in writing at that time, the Contractor shall promptly remove such facilities provided for under subparagraph (c)(1) of this clause, up to 100 percent of each monthly bill until there is refunded the amount that reflects the Government’s connection costs for that portion of the facilities used in serving others.

(3) In the event the Contractor terminates this contract, or defaults in performance, prior to full credit of any connection charge paid by the Government, the Contractor shall pay to the Government an amount equal to the uncredited balance of the connection charge as of the date of the termination or default.

(d) Termination before completion of facilities. The Government reserves the right to terminate this contract at any time before completion of the facilities with respect to which the Government is to pay a connection charge. In the event the Government exercises this right, the Contractor shall be paid the cost of any work accomplished, including direct and indirect costs reasonably allocable to the completed work prior to the time of termination by the Government, plus the cost of removal, less the salvage value.

(e) Termination after completion of facilities. In the event the Government terminates this contract after completion of the facilities with respect to which the Government has paid a connection charge, but before the crediting in full by the Contractor of any connection charge in accordance with the terms of this contract, the Contractor shall have the following options:

(1) To retain in place for ______ months after the notice of termination by the Government such facilities on condition that—

(i) If, during such ______ month period, the Contractor serves any other customer by means of such facilities, the Contractor, shall, in lieu of allowing credits, pay the Government during such period installments in like amount, manner, and extent as the credit provided for under paragraph (c) of this clause before such termination; and

(ii) Immediately after such ______ month period the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge.

(2) To remove such facilities at the Contractor’s own expense within ______ months after the effective date of the termination by the Government. If the Contractor elects to remove such facilities, the Government shall then have the option of purchasing such facilities at the agreed salvage value set forth herein; and provided further, that the Contractor shall, at the direction of the Government, leave in place such facilities located on Government property which the Government elects to purchase at the agreed salvage value.

(End of clause)

Alternate I (NOV 1994). If the Contracting Officer determines that a non-refundable charge is to be paid and no credits are due the Government, delete paragraphs (c) and (e), renumber paragraph (d) as (c) and add the following as paragraph (d):

(d) Termination after completion of facilities. In the event the Government terminates this contract after completion of the facilities with respect to which the Government is to pay a connection charge, the Contractor shall have the following options:

(1) To retain in place for ______ months after the notice of termination by the Government. If the Contractor and the Government have not agreed on terms for retention in place beyond ______ months, then the Contractor must remove the facilities pursuant to the terms of subparagraph (d)(2) of this clause.

(2) To remove such facilities at the Contractor’s own expense within ______ months after the effective date of the termination by the Government. If the Contractor elects to remove such facilities, the Government shall then have the option of purchasing such facilities at the agreed salvage value set forth herein; and provided further, that the Contractor shall, at the direction of the Government, leave in place such facilities located on Government property which the Government elects to purchase at the agreed salvage value.

[59 FR 67024, Dec. 28, 1994]

52.241–10 Termination Liability.

As prescribed in 41.501(d)(4), insert a clause substantially the same as the following:

**Termination Liability (FEB 1995)**

(a) If the Government discontinues utility service under this contract before completion of the facilities cost recovery period specified in paragraph (b) of this clause, in consideration of the Contractor furnishing and installing at its expense, the new facility described herein, the Government shall pay termination charges, calculated as set forth in this clause.

(b) Facility cost recovery period. The period of time, not exceeding the term of this contract, during which the net cost of the new facility, shall be recovered by the Contractor is—
52.241–11 Multiple Service Locations.

As prescribed in 41.501(d)(5), insert a clause substantially the same as the following:

MULTIPLE SERVICE LOCATIONS (FEB 1995)

(a) At any time by written order, the Contracting Officer may designate any location within the service area of the Contractor at which utility service shall commence or be discontinued. Any changes to the service specifications shall be made a part of the contract by the issuance of a contract modification to include the name and location of the service, specifying any different rate, the point of delivery, different service specifications, and any other terms and conditions.

(b) The applicable monthly charge specified in this contract shall be equitably prorated from the period in which commencement or discontinuance of service at any service location designated under the Service Specifications shall become effective.

(End of clause)

[59 FR 67025, Dec. 28, 1994]

52.241–12 Nonrefundable, Nonrecurring Service Charge.

As prescribed in 41.501(d)(6), insert a clause substantially the same as the following:

NONREFUNDABLE, NONRECURRING SERVICE CHARGE (FEB 1995)

As provided herein, the Government will pay a nonrefundable, nonrecurring charge when the rules and regulations of a Contractor require that a customer pay (1) a charge for the initiation of service, (2) a contribution in aid of construction, or (3) a nonrefundable membership fee. This charge may be in addition to or in lieu of a connection charge. Therefore, there is hereby added to the Contractor’s schedule a nonrefundable, nonrecurring charge for ______ in the amount of $______ dollars payable [specify dates or schedules].

(End of clause)

[59 FR 67025, Dec. 28, 1994]

52.241–13 Capital Credits.

As prescribed in 41.501(d)(7), insert a clause substantially the same as the following:

CAPITAL CREDITS (FEB 1995)

(a) The Government is a member of the [insert cooperative name], and as any other member, is entitled to capital credits consistent with the bylaws of the cooperative, which states the obligation of the Contractor to pay capital credits and which specifies the method and time of payment.

(b) The Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Officer, in writing, on an ______ basis [insert period of time] a list of accrued credits by contract number, year, and delivery point.

(c) Payment of capital credits will be made by check, payable to the ______ [insert agency name], and forwarded to the Contracting Officer at ______ [insert agency address], unless otherwise directed in writing by the Contracting Officer. Checks shall cite the current or last contract number and indicate whether the check is partial or final payment for all capital credits accrued.

(End of clause)

[59 FR 67025, Dec. 28, 1994]

52.242–1 Notice of Intent To Disallow Costs.

As prescribed in 42.802, insert the following clause in solicitations and contracts when a cost-reimbursement contract, a fixed-price incentive contract, or a contract providing for price redetermination is contemplated:
52.242–4 Certification of Final Indirect Costs.

As prescribed in 42.703–2(f), insert the following clause:

PENALTIES FOR UNALLOWABLE COSTS (MAY 2001)

(a) Definition. Proposal, as used in this clause, means either—

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which—

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in section 42.709 of the Federal Acquisition Regulation (FAR).

(c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in Subpart 2.1 of the FAR, or an executive agency supplement to the FAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to—

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed—

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92–41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.).

(g) Pursuant to the criteria in FAR 42.709–5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

(End of clause)
52.242–5—52.242–12

CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)

(a) The Contractor shall—

(1) Certify any proposal to establish or modify final indirect cost rates;
(2) Use the format in paragraph (c) of this clause to certify; and

(3) Have the certificate signed by an individual of the Contractor’s organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.

(c) The certificate of final indirect costs shall read as follows:

CERTIFICATE OF FINAL INDIRECT COSTS

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and

2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm:

Signature: Name of Certifying Official:

Title:

Date of Execution:

(End of clause)


52.242–14 Suspension of Work.

As prescribed in 42.1305(a), insert the following clause in solicitations and contracts when a fixed-price construction or architect-engineer contract is contemplated:

SUSPENSION OF WORK (APR 1984)

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer’s failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.
52.242–15 Stop-Work Order.

As prescribed in 42.1305(b), insert the following clause. The 90-day period stated in the clause may be reduced to less than 90 days.

STOP-WORK ORDER (AUG 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

(1) Cancel the stop-work order; or
(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

52.242–16 [Reserved]

52.242–17 Government Delay of Work.

As prescribed in 42.1305(c), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated for supplies other than commercial or modified-commercial items. The clause use is optional when a fixed-price contract is contemplated for services, or for supplies that are commercial or modified-commercial items.

GOVERNMENT DELAY OF WORK (APR 1984)

(a) If the performance of all or any part of the work of this contract is delayed or interrupted (1) by an act of the Contracting Officer in the administration of this contract that is not expressly or impliedly authorized by this contract, or (2) by a failure of the Contractor to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by the delay or interruption and the contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other contractual term or condition affected by the delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for
which an adjustment is provided or excluded under any other term or condition of this contract.

(b) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved, and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

(End of clause)


52.243–1 Changes—Fixed-Price.

As prescribed in 43.205(e), insert the following clause:

CHANGES—FIXED-PRICE (AUG 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 delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) 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.

Alternate I (APR 1984). If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

Alternate II (APR 1984). If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(4) 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.

(5) Method of shipment or packing of supplies.

(6) Place of delivery.

Alternate III (APR 1984). If the requirement is for architect-engineer or other professional services, substitute the following paragraph (a) for paragraph (a) of the basic clause and add the following paragraph (f):

(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 the services to be performed.

(f) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer.
Alternate IV (APR 1984). If the requirement is for transportation services, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(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) Specifications.
(2) Work or methods.
(3) Place of origin.
(4) Place of delivery.
(5) Tonnage to be shipped.
(6) Amount of Government-furnished property.

Alternate V (APR 1984). If the requirement is for research and development and it is desired to include the clause, substitute the following subparagraphs (a)(1) and (a)(3) and paragraph (b) for subparagraphs (a)(1) and (a)(3) and paragraph (b) of the basic clause:

(a) Drawings, designs, or specifications.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the contract accordingly.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

(End of clause)

Alternate I (APR 1984). If the requirement is for services and no supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.
(2) Time of performance (i.e., hours of the day, days of the week, etc.).
(3) Place of performance of the services.

Alternate II (APR 1984). If the requirement is for services and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the
Changes—Time-and-Materials or Labor-Hours.

As prescribed in 43.205(c), insert the following clause:

Changes—Time-and-Materials or Labor-Hours (SEP 2000)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.
(2) Time of performance (i.e., hours of the day, days of the week, etc.).
(3) Place of performance of the services.
(4) 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.
(5) Method of shipment or packing of supplies.
(6) Place of delivery.
(7) Amount of Government-furnished property.
(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer will make an equitable adjustment in any one or more of the following and will modify the contract accordingly:

(1) Ceiling price.
(2) Hourly rates.
(3) Delivery schedule.
(4) Other affected terms.
(c) The Contractor shall assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
(d) Failure to agree to any adjustment will be a dispute under the Disputes clause. However, nothing in this clause excuses the Contractor from proceeding with the contract as changed.

(End of clause)

Changes (JUN 2007)

As prescribed in 43.205(d), insert the following clause. The 30-day period may be varied according to agency procedures.

Changes (JUN 2007)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes—

(1) In the specifications (including drawings and designs);
(2) In the method or manner of performance of the work;
(3) In the Government-furnished property or services; or
(4) Directing acceleration in the performance of the work.
(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2)
Federal Acquisition Regulation

52.243–7

that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change order under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(End of clause)


52.243–6 Change Order Accounting.

As prescribed in 43.205(f), the contracting officer may insert a clause, substantially the same as follows:

CHANGE ORDER ACCOUNTING (APR 1984)

The Contracting Officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds $100,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Contracting Officer or the matter is conclusively disposed of in accordance with the Disputes clause.

(End of clause)


52.243–5 Changes and Changed Conditions.

As prescribed in 43.205(e), insert the following clause:

CHANGES AND CHANGED CONDITIONS (APR 1984)

(a) The Contracting Officer may, in writing, order changes in the drawings and specifications within the general scope of the contract.

(b) The Contractor shall promptly notify the Contracting Officer, in writing, of subsurface or latent physical conditions differing materially from those indicated in this contract or unusual physical conditions at the site before proceeding with the work.

(c) If changes under paragraph (a) or conditions under paragraph (b) increase or decrease the cost of, or time required for performing the work, the Contracting Officer shall make an equitable adjustment (see paragraph (d)) upon submittal of a proposal for adjustment (hereafter referred to as proposal) by the Contractor before final payment under the contract.

(d) The Contracting Officer shall not make an equitable adjustment under paragraph (b) unless—

(1) The Contractor has submitted and the Contracting Officer has received the required written notice; or

(2) The Contracting Officer waives the requirement for the written notice.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause.

(End of clause)

Contracting Officer, as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) Notice. The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly, within _ (to be negotiated) calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state—

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including—

(i) What contract line items have been or may be affected by the alleged change;

(ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;

(iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;

(iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

(v) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

(c) Continued performance. Following submission of the notice required by (b) above, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in (b) above, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies furnished to the Contractor and the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the SAR.

(d) Government response. The Contracting Officer shall promptly, within _ (to be negotiated) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either—

(1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;

(2) Countermand any communication regarded as a change;

(3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or

(4) In the event the Contractor's notice information is inadequate to make a decision under (1), (2), or (3) above, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(e) Equitable adjustments. (1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made—

(i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under
this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in (b) and (c) above.

**NOTE:** The phrases contract price and cost wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

*(End of clause)*


**52.244-1 [Reserved]**

**52.244-2 Subcontracts.**

As prescribed in 44.204(a)(1), insert the following clause:

**SUBCONTRACTS (JUN 2007)**

(a) Definitions. As used in this clause—

Approved purchasing system means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

Consent to subcontract means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

Subcontract means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(i) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

- (e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:
  - (i) A description of the supplies or services to be subcontracted.
  - (ii) Identification of the type of subcontract to be used.
  - (iii) Identification of the proposed subcontractor.
  - (iv) The proposed subcontract price.
  - (v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
  - (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
  - (vii) A negotiation memorandum reflecting—
    - (A) The principal elements of the subcontract price negotiations;
    - (B) The most significant considerations controlling establishment of initial or revised prices;
    - (C) The reason cost or pricing data were or were not required;
    - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
    - (E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
    - (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
    - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.
(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.

(i) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor’s purchasing system shall constitute a determination—

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404–4(c)(4)(i).

(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(i) The Government reserves the right to review the Contractor’s purchasing system as set forth in FAR Subpart 44.3.

(2) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

(End of clause)

Alternate I (JUNE 2007). As prescribed in 44.204(a)(2), substitute the following paragraph (e)(2) for paragraph (e)(2) of the basic clause:

(e)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c) or (d) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold of 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (e)(1)(i) through (e)(1)(iv) of this clause.

(End of clause)
Subcontracts for Commercial Items (Aug 11, 2009)

(a) Definitions. As used in this clause—

Commercial item has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

Subcontract includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)), if the subcontract exceeds $5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111–5), if the subcontract is funded under the Recovery Act. (iii) 52.219–8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $550,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(iii) 52.219–8, Utilization of Small Business Concerns (MAY 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $550,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(iv) 52.222–26, Equal Opportunity (MAR 2007) (E.O. 11246).

(v) 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006) (38 U.S.C. 4212(a)).


(vii) 52.222–39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201), if flow down is required in accordance with paragraph (g) of FAR clause 52.222–39.

(viii) 52.222–50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

(ix) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with the asset to a condition necessary for normal or expected use.

(b) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

52.245–1 Government Property.

As prescribed in 45.107(a), insert the following clause:

Government Property (Jun 2007)

(a) Definitions. As used in this clause—

Acquisition cost means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

Cannibalize means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

Contractor-acquired property means property acquired, fabricated, or otherwise provided by the Contractor for performing a contract, and to which the Government has title.

Contractor inventory means—

(1) Any property acquired by and in the possession of a Contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract.
(2) Any property that the Government is obligated or has the option to take over under any type of contract, e.g., as a result either of any changes in the specifications or plans for, or completion of, the work, for the convenience or at the option of the Government; and
(3) Government property that exceeds the amounts needed to complete full performance under the entire contract.

Contractor’s managerial personnel means the Contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—
(1) All or substantially all of the Contractor’s business;
(2) All or substantially all of the Contractor’s operation at any one plant or separate location; or
(3) A separate and complete major industrial operation.

Demilitarization means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.
Discrepancies incident to shipment means any differences (e.g., count or condition) between the items documented to have been shipped and items actually received.

Equipment means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use.

Government-furnished property means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract.

Government property means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property.

Material means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end item. Material does not include equipment, special tooling and special test equipment.

Noneveraile means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

Plant equipment as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

Precious metals means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

Property means all tangible property, both real and personal.

Property Administrator means an authorized representative of the Contracting Officer appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a Contractor.

Provide means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

Real property means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

Sensitive property means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

Surplus property means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA).

(b) Property management. (1) The Contractor shall have a system to manage (control, use, preserve, protect, repair and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective control of Government property, consistent with voluntary consensus standards and/or industry-leading practices and standards for Government property management except where inconsistent with law or regulation. During the period of performance, the Contractor shall disclose any significant changes to their property management system to the Property Administrator prior to implementation.

(2) The Contractor’s responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, disposition, or via a completed investigation, evaluation, and final determination for lost, damaged, destroyed, or stolen property. This requirement applies to all Government property under the Contractor’s accountability, stewardship, possession or control, including its
Federal Acquisition Regulation

52.245-1

vendors or subcontractors (see paragraph (f)(1)(v) of this clause).

(3) The Contractor shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.

(c) Use of Government property. The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer. The Contractor shall not modify, cannibalize, or make alterations to Government property unless this contract specifically identifies the modifications, alterations or improvements as work to be performed.

(d) Government-furnished property. (1) The Government shall deliver to the Contractor the Government-furnished property described in this contract. The Government shall furnish related data and information needed for the intended use of the property. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Contractor as contractor-acquired property and subsequently transferred to another contract with this Contractor.

(2) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished property will be suitable for contract performance and will be delivered to the Contractor by the dates stated in the contract.

(i) If the property is not delivered to the Contractor by the dates stated in the contract, the Contracting Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the contract.

(ii) In the event property is received by the Contractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Contracting Officer shall, upon the Contractor's timely written request, advise the Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government’s expense. Upon completion of the required action(s), the Contracting Officer shall consider an equitable adjustment to the contract (see also paragraph (f)(1)(i)(A) of this clause).

(iii) The Government may, at its option, furnish property in an “as-is” condition. The Contractor will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for contract performance. Any repairs, replacement, and/or refurbishment shall be at the Contractor’s expense.

(3)(i) The Contracting Officer may by written notice, at any time—

(A) Increase or decrease the amount of Government-furnished property under this contract;

(B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or

(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor’s timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

(e) Title to Government property. (1) The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(2) Fixed-price contracts. (i) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as “Government property”), are subject to the provisions of this clause.

(ii) Title to each item of equipment, special test equipment and special tooling acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(iii) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract—

(A) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor’s delivery of such material; and

(B) Title to all other material shall pass to and vest in the Government upon—

(1) Issuance of the material for use in contract performance;

(2) Commencement of processing of the material or its use in contract performance; or

(3) Reimbursement of the cost of the material by the Government, whichever occurs first.

(3) Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts.

(i) Title to all property purchased by the
Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor’s delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—

(A) Issuance of the property for use in contract performance;
(B) Commencement of processing of the property for use in contract performance; or
(C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(ii) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (e)(3)(ii) (collectively referred to as “Government property”), are subject to the provisions of this clause.

(f) Contract plans and systems. (1) Contractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:

(i) Acquisition of Property. The Contractor shall document that all property was acquired consistent with its engineering, production planning, and material control operations.

(ii) Receipt of Government Property. The Contractor shall receive Government property (document the receipt), record the information necessary to meet the record requirements of paragraph (f)(1)(ii)(A)1 through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.

(A) Government-furnished property. The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, damage and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) Contractor-acquired property. The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

(iii) Records of Government property. The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property.

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

(1) The name, part number and description, manufacturer, model number, and National Stock Number (if needed for additional identification tracking and/or disposition).
(2) Quantity received (or fabricated), issued, and balance-on-hand.
(3) Unit acquisition cost.
(4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).
(5) Unit of measure.
(6) Accountable contract number or equivalent code designation.
(7) Location.
(8) Disposition.
(9) Posting reference and date of transaction.
(10) Date placed in service.

(B) Use of a Receipt and Issue System for Government Material. When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

(iv) Physical inventory. The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the Contractor’s system or the property is to be transferred to a follow-on contract).

(v) Subcontractor control. (A) The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss, damage, destruction or theft of Government property).

(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor’s property management system.

(vi) Reports. The Contractor shall have a process to create and provide reports of discrepancies; loss, damage, destruction, or theft; physical inventory results; audits and self-assessments; corrective actions; and other property related reports as directed by the Contracting Officer.

(A) Loss, damage, destruction, or theft. Unless otherwise directed by the Property Administrator, the Contractor shall investigate and promptly furnish a written narrative of all incidents of loss, damage, destruction, or theft to the property administrator as soon as the facts become known or when requested by the Government.

(B) Such reports shall, at a minimum, contain the following information:
Federal Acquisition Regulation

52.245–1

Date of incident (if known).
(2) The name, commercial description, manufacturer, model number, and National Stock Number (if applicable).
(3) Quantity.
(4) Unique Item Identifier (if available).
(5) Accountable Contract number.
(6) A statement indicating current or future need.
(7) Acquisition cost, or if applicable, estimated scrap proceeds, estimated repair or replacement costs.
(8) All known interests in commingled property of which the Government property is a part.
(9) Cause and corrective action taken or to be taken to prevent recurrence.
(10) A statement that the Government will receive any reimbursement covering the loss, damage, destruction, or theft, in the event the Contractor was or will be reimbursed or compensated.
(11) Copies of all supporting documentation.
(12) Last known location.
(13) A statement that the property did or did not contain sensitive or hazardous material, and if so, that the appropriate agencies were notified.
(vii) Relief of stewardship responsibility. Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility for Government property when such property is—
(A) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator; or a Property Administrator granted relief of responsibility for loss, damage, destruction, or theft of Government property.
(B) Delivered or shipped from the Contractor’s plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or
(C) Disposed of in accordance with paragraphs (i) and (k) of this clause.
(viii) Utilizing Government property. (A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.
(B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government property with property not owned by the Government.
(ix) Maintenance. The Contractor shall properly maintain Government property. The Contractor’s maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.
(x) Property closeout. The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss, damage, destruction, or theft cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.
(1) The Contractor shall establish and maintain Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.
(2) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and/or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.
(g) Systems analysis. (1) The Government shall have access to the contractor’s premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor’s property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.
(2) Records of Government property shall be readily available to authorized Government personnel and shall be safeguarded from tampering or destruction.
(3) Should it be determined by the Government that the Contractor’s property management practices are inadequate or not acceptable for the effective management and/or control of Government property under this contract, and/or present an undue risk to the Government, the Contractor shall immediately take all necessary corrective actions as directed by the Property Administrator.
(4) The Contractor shall ensure Government access to subcontractor premises, and all Government property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the subcontractor’s property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.
(h) Contractor Liability for Government Property. (1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, damage, destruction, or theft to the Government property furnished or acquired under this contract, except when any one of the following applies—
(i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement).
The allowability of insurance costs shall be determined in accordance with 31.205–19.

(ii) The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel. Contractor's managerial personnel, in this clause, means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business; all or substantially all of the Contractor's operation at any one plant or separate location; or a separate and complete major industrial operation.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss, damage, destruction, or theft, due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss, damage, destruction, or theft of Government property occurred while the Contractor had adequate property management practices or the loss, damage, destruction, or theft of Government property did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. The Contractor shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and maintain adequate property management practices. The Contractor shall take timely corrective action. If the Contractor had adequate property management practices or the loss, damage, destruction, or theft of Government property did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) Delivery of Government-furnished property in a condition not suitable for its intended use.

(3) An increase, decrease, or substitution of Government-furnished property.

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) Contractor inventory disposal. Except as otherwise provided for in this contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer.

(1) Scrap to which the Government has obtained title under paragraph (e) of this clause.

(a) Contractor with an approved scrap procedure. The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Contractor shall submit the scrap on an inventory disposal schedule.

(b) For scrap from other than production or testing the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures), except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that—

(1) Requires demilitarization;

(2) Is a classified item;

(3) Is generated from classified items;

(4) Contains hazardous materials or hazardous wastes;

(5) Contains precious metals; or

(6) Is dangerous to the public health, safety, or welfare.

(iii) The Contractor shall list, on Standard Form 1428, Inventory Disposal Schedule, scrap to which the Government has obtained title under paragraph (e) of this clause, and property that was not purchased under paragraph (j)(2)(i)(A) of this clause, property that was not used in the performance of other Government contracts is practical; or

(A) May contact the Contracting Officer if use of the property in the performance of other Government contracts is practical;

(B) May purchase the property at the acquisition cost; or

(C) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices).

(ii) The Contractor shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was used in the performance of other Government contracts under paragraph (j)(2)(i)(A) of this clause, property that was not purchased under paragraph (j)(2)(i)(B) of this clause, and property that
could not be returned to a supplier under paragraph (j)(2)(i)(C) of this clause.

(3) Inventory disposal schedules. (1) The Contractor shall use Standard Form 128, Inventory Disposal Schedule, to identify—
(A) Government-furnished property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of this contract;
(B) Contractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract; and
(C) Termination inventory.
(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.
(iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare separate inventory disposal schedules for—
(A) Special test equipment with commercial components;
(B) Special test equipment without commercial components;
(C) Printing equipment;
(D) Information technology (e.g., computers, computer components, peripheral equipment, and related equipment);
(E) Precious metals;
(F) Nonnuclear hazardous materials or hazardous wastes; or
(G) Nuclear materials or nuclear wastes.
(iv) The Contractor shall describe the property in sufficient detail to permit an understanding of its intended use. Property with the same description, condition code, and reporting location may be grouped in a single line item.

(4) Submission requirements. The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—
(i) 30-days following the Contractor's determination that a Government property item is no longer required for performance of this contract;
(ii) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or
(iii) 120 days, or such longer period as may be approved by the Termination Contracting Officer following contract termination in whole or in part.

(5) Corrections. The Plant Clearance Officer may—
(i) Reject a schedule for cause (e.g., contains errors, determined to be inaccurate); and
(ii) Require the Contractor to correct an inventory disposal schedule.

(6) Postsubmission adjustments. The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.

(7) Storage. (i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government’s failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.
(ii) The Contractor shall obtain the Plant Clearance Officer’s approval to remove Government property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage facility shall be appropriate for assuring the property’s physical safety and suitability for use. Approval does not relieve the Contractor of any liability for such property under this contract.

(8) Disposition instructions. (i) If the Government does not furnish disposition instructions to the Contractor within 45 days following acceptance of a scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor’s approved scrap procedures.
(ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. If not returned to the Government, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.
(iii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(9) Disposal proceeds. As directed by the Contracting Officer, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the contract, or to the Treasury of the United States as miscellaneous receipts.

(10) Subcontractor inventory disposal schedules. The Contractor shall require its Subcontractors to submit inventory disposal schedules to the Contractor in accordance with the requirements of paragraph (j)(4) of this clause.

(11) Abandonment of Government property. (1) The Government shall not abandon sensitive
Government property or termination inventory without the Contractor’s written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place, at which time all obligations of the Government regarding such property shall cease.

(i) The Government has no obligation to restore or rehabilitate the Contractor’s premises under any circumstances; however, if Government—furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

(j) Communication. All communications under this clause shall be in writing.

(m) Contracts outside the United States. If this contract is to be performed outside of the United States and its outlying areas, the words “Government” and “Government-furnished” (wherever they appear in this clause) shall be construed as “United States Government” and “United States Government-furnished,” respectively.

(End of clause)

Alternate I (JUN 2007). As prescribed in 45.107(a)(2), substitute the following for paragraph (h)(1) of the basic clause:

(h)(1) The Contractor assumes the risk of, and shall be responsible for, any loss, damage, destruction, or theft of Government property upon its delivery to the Contractor as Government-furnished property. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

Alternate II (JUN 2007). As prescribed in 45.107(a)(3), substitute the following for paragraph (e)(3) of the basic clause:

(e)(3) Title to property (and other tangible personal property) purchased with funds available for research and having an acquisition cost of less than $5,000 shall vest in the Contractor upon acquisition or as soon thereafter as feasible; provided that the Contractor obtained the Contracting Officer’s approval before such acquisition. Title to property purchased with funds available for research and having an acquisition cost of $5,000 or more shall vest as set forth in this contract. If title to property vests in the Contractor under this paragraph, the Contractor agrees that no costs shall be allowed for any depreciation, amortization, or use under any existing or future Government contract or subcontract thereunder. The Contractor shall furnish the Contracting Officer a list of all property to which title is vested in the Contractor under this paragraph within 10 days following the end of the calendar quarter during which it was received. Vesting title under this paragraph is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract, the Contractor accepts and agrees that—

“...No person in the United States or its outlying areas shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to property)...”


52.245–2 Government Property Installation Operation Services.

As prescribed in 45.107(b), insert the following clause:

GOVERNMENT PROPERTY INSTALLATION OPERATION SERVICES (JUN 2007)

(a) This Government Property listed in paragraph (e) of this clause is furnished to the Contractor in an “as-is, where is” condition. The Government makes no warranty regarding the suitability for use of the Government property specified in this contract. The Contractor shall be afforded the opportunity to inspect the Government property as specified in the solicitation.

(b) The Government bears no responsibility for repair or replacement of any lost, damaged or destroyed Government property. If any or all of the Government property is lost, damaged or destroyed or becomes no longer usable, the Contractor shall be responsible for replacement of the property at Contractor expense. The Contractor shall have title to all replacement property and shall continue to be responsible for contract performance.

(c) Unless the Contracting Officer determines otherwise, the Government abandons all rights and title to unserviceable and scrap property resulting from contract performance. Upon notification to the Contracting Officer, the Contractor shall remove such property from the Government premises and dispose of it at Contractor expense.

(d) Except as provided in this clause, Government property furnished under this contract shall be governed by the Government Property clause of this contract.

(e) Government property provided under this clause:
Federal Acquisition Regulation

52.245–9

Use and Charges.

As prescribed in 45.107(c), insert the following clause:

USE AND CHARGES (JUN 2007)

(a) Definitions. As used in this clause:

(1) Rental charges shall be submitted to the Administrative Contracting Officer (ACO), identify the property for which rental is requested, propose a rental period, and compute an estimated rental charge by using the Contractor’s best estimate of rental time in the formula described in paragraph (e) of this clause. 

(2) The Contractor shall not use Government property for nongovernmental purposes, including Independent Research and Development, until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property shall be used only on a non-interference basis.

(e) Rental charge—(1) Real property and associated fixtures. (i) The Contractor shall obtain, at its expense, a property appraisal from an independent licensed, accredited, or certified appraiser that computes a monthly, daily, or hourly rental rate for comparable commercial property. The appraisal may be used to compute rentals under this clause throughout its effective period or, if an effective period is not stated in the appraisal, for one year following the date the appraisal was performed. The Contractor shall submit the appraisal to the ACO at least 30 days prior to the date the property is needed for nongovernmental use. Except as provided in paragraph (e)(1)(iii) of this clause, the ACO shall use the appraisal rental rate to determine a reasonable rental charge.

(ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily appraisal rental rates shall be divided by 720 or 24, respectively, to determine an hourly rental rate.

(iii) When the ACO believes the appraisal rental rate is unreasonable, the ACO shall promptly notify the Contractor. The parties may agree on an alternative means for computing a reasonable rental charge.

(iv) The Contractor shall obtain, at its expense, additional property appraisals in the same manner as provided in paragraph (e)(1)(i) if the effective period has expired and the Contractor desires the continued use of property for nongovernmental use. The Contractor may obtain additional appraisals...
within the effective period of the current appraisal if the market prices decrease substantially.

(2) Other Government property. The Contractor may elect to compute the rental charge using the appraisal method described in paragraph (e)(1) of this clause subject to the constraints therein or the following formula in which rental time shall be expressed in increments of not less than one hour with portions of hours rounded to the next higher hour: The rental charge is calculated by multiplying 2 percent of the acquisition cost by the hours of rental time, and dividing by 720.

(3) Alternative methodology. The Contractor may request consideration of an alternative basis for computing the rental charge if it considers the monthly rental rate or a time-based rental unreasonable or impractical.

(1) Rental payments. (1) Rent is due 60 days following completion of the rental period or as otherwise specified in the contract. The Contractor shall compute the rental due, and furnish records or other supporting data in sufficient detail to permit the ACO to verify the rental time and computation. Payment shall be made by check payable to the Treasurer of the United States and sent to the contract administration office identified in this contract, unless otherwise specified by the Contracting Officer.

(2) Interest will be charged if payment is not made by the date specified in paragraph (e)(1) of this clause. Interest will accrue at the "Renegotiation Board Interest Rate" (published in the FEDERAL REGISTER semi-annually on or about January 1st and July 1st) for the period in which the rent is due.

(3) The Government’s acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor’s unauthorized use of Government property or any other failure to perform this contract according to its terms.

(g) Use revocation. At any time during the rental period, the Government may revoke nongovernmental use authorization and require the Contractor, at the Contractor’s expense, to return the property to the Government, restore the property to its pre-rental condition (less normal wear and tear), or both.

(h) Unauthorized use. The unauthorized use of Government property can subject a person to fines, imprisonment, or both, under 18 U.S.C. 641.

(End of clause)
manufacture, and in any event before acceptance. The Government shall perform inspections and tests in a manner that will not unduly delay the work. The Government assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor’s or subcontractor’s premises; provided, that in case of rejection, the Government shall not be liable for any reduction in the value of inspection or test samples.

(e)(1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge the Contractor the additional cost of inspection or test.

(2) The Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

(f) The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformance with contract requirements. The Government may reject nonconforming supplies with or without disposition instructions.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i)(1) If this contract provides for the performance of Government quality assurance at source, and if requested by the Government, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract and (ii) when the supplies will be ready for Government inspection.

(2) The Governments request shall specify the period and method of the advance notification and the Government representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Government representative is in residence in the Contractor’s plant, nor more than 7 workdays in other instances.

(j) The Government shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Government failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming supplies.

(k) Inspections and tests by the Government do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor’s plant at the Contracting Officer’s election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances. If the Contracting Officer elects not to require correction or replacement, when supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor’s plant and return to the original point when that point is not the Contractor’s plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right by contract or otherwise to replace or
correct such supplies and charge to the Contractor the cost occasioned the Government thereby.

(End of clause)

Alternate I (JUL 1985). If a fixed-price incentive contract is contemplated, substitute paragraphs (g), (h), and (l) below for paragraphs (g), (h), and (l) of the basic clause.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required shall disclose the corrective action taken. Cost of removal, replacement, or correction shall be considered a cost incurred, or to be incurred, in the total final negotiated cost fixed under the incentive price revision clause. However, replacements or corrections by the Contractor after the establishment of the total final price shall be at no increase in the total final price.

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either (1) by contract or otherwise, remove, replace, or correct the supplies and equitably reduce the target price or, if established, the total final price or (2) may terminate the contract for default. Unless the Contractor corrects or replaces the nonconforming supplies within the delivery schedule, the Contracting Officer may require their delivery and equitably reduce any target price or, if it is established, the total final contract price. Failure to agree upon an equitable price reduction shall be a dispute.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in any target price, or, if it is established, the total final price of this contract, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor’s plant at the Contracting Officer’s election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in any target price, or, if it is established, the total final price of this contract, if the Contractor fails to meet such delivery schedule; or (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the total final price as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation costs from the original point of delivery to the Contractor’s plant and return to the original point when that point is not the Contractor’s plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right by contract or otherwise to replace or correct such supplies and equitably reduce any target price or, if it is established, the total final price of this contract.

Alternate II (JUL 1985). If a fixed-ceiling-price contract with retroactive price redetermination is contemplated, substitute paragraphs (g), (h), and (l) below for paragraphs (g), (h), and (l) of the basic clause:

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required shall disclose the corrective action taken. Cost of removal, replacement, or correction shall be considered a cost incurred, or to be incurred, when redetermining the prices under the price redetermination clause. However, replacements or corrections by the Contractor after the establishment of the redetermined prices shall be at no increase in the redetermined price.

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either (1) by contract or otherwise, remove, replace, or correct the supplies and equitably reduce the initial contract prices or, if established, the redetermined contract prices or (2) terminate the contract for default. Unless the Contractor corrects or replaces the nonconforming supplies within the delivery schedule, the Contracting Officer may require their delivery and equitably reduce the initial contract prices or, if it is established, the redetermined contract prices. Failure to agree upon an equitable price reduction shall be a dispute.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the
right to require the Contractor (1) at no increase in the initial contract prices, or, if it is established, the redetermined prices of this contract, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor’s plant at the Contracting Officer’s election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in the initial contract prices, or, if it is established, the redetermined prices of this contract, if the Contractor fails to meet such delivery schedule; or (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the initial contract prices, or, if it is established, the redetermined prices of this contract, as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation costs from the original point of delivery to the Contractor’s plant and return to the original point when that point is not the Contractor’s plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right by contract or otherwise to replace or correct such supplies and equitably reduce costs, determined as provided in the Allowable Cost and Payment clause, but no additional cost or correction shall be included in allowable cost, determined as provided in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Contractor shall not tender for acceptance supplies required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

Supplies includes but is not limited to raw materials, components, intermediate assemblies, end products, lots of supplies, and, when the contract does not include the Warranty of Data clause, data.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling under this contract. Complete records of all inspections and test performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test the contract supplies, to the extent practicable at all places and times, including the period of manufacture, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in the contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the contract, the Government shall accept supplies as promptly as practicable after delivery, and supplies shall be deemed accepted 60 days after delivery, unless accepted earlier.

(f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of the supplies to be delivered under the contract, the Government may require the Contractor to replace or correct any supplies that are nonconforming at time of delivery. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. Except as otherwise provided in paragraph (b) above, the cost of replacement or correction shall be included in allowable cost, determined as provided in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Contractor shall not tender for acceptance supplies required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
(g)(1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may—
(i) By contract or otherwise, perform the replacement or correction and charge to the Contractor any increased cost or make an equitable reduction in any fixed fee paid or payable under the contract;
(ii) Require delivery of undelivered supplies at an equitable reduction in any fixed fee paid or payable under the contract; or
(iii) Terminate the contract for default.
(2) Failure to agree on the amount of increased cost to be charged to the Contractor or to the reduction in the fixed fee shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to correct or replace, without cost to the Government, nonconforming supplies, if the nonconformances are due to (1) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or (2) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause applies in the same manner to corrected or replacement supplies as to supplies originally delivered.

(j) The Contractor shall have no obligation or liability under this contract to replace supplies that were nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in the contract.

(k) Except as otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of clause)


52.246-4 Inspection of Services—Fixed-Price.

As prescribed in 46.304, insert the following clause:

INSPECTION OF SERVICES—FIXED-PRICE (AUG 1996)

(a) Definitions. Services, as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to perform the services again or to take the necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.

(i) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service or (2) terminate the contract for default.

(End of clause)


52.246-5 Inspection of Services—Cost-Reimbursement.

As prescribed in 46.305, insert the following clause in solicitations and contracts for services, or supplies that involve the furnishing of services, when a cost-reimbursement contract is contemplated:

INSPECTION OF SERVICES—COST-REIMBURSEMENT (APR 1984)

(a) Definition. Services, as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the
Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce any fee payable under the contract to reflect the reduced value of the services performed.

(e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce any fee payable under the contract to reflect the reduced value of the services performed.

(f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (b) below, the cost of replacement or correction shall be determined under the Payments Under Time-and-Material and Labor-Hour Contracts clause, but the hourly rate for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g)(1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may—

(i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or
(ii) Terminate this contract for default.

(2) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Contractor’s managerial personnel or (2) the conduct of one or more of the Contractor’s employees selected or retained by the Contractor after any of the Contractor’s managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(j) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(k) Unless otherwise specified in the contract, the Contractor’s obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of clause)

Alternate I (APR 1984). If Government inspection and acceptance are to be performed at the contractor’s plant, paragraph (e) below may be substituted for paragraph (e) of the basic clause:

(e) The Government shall inspect for acceptance all items (other than aircraft to be flown away, if any) to be furnished under this contract at the Contractor’s plant or plants specified in the contract, or at any other plant or plants approved for such purpose in writing by the Contracting Officer. The Contractor shall inform the contract administration office or Contracting Officer when the work is ready for inspection. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when items are not ready at the time for which inspection and test is requested by the Contractor.


52.246-7 Inspection of Research and Development—Fixed-Price

As prescribed in 46.307(a), insert the following clause:

INSPECTION OF RESEARCH AND DEVELOPMENT—
FIXED-PRICE (AUG 1996)

(a) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(b) The Government has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the premises of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(c) If the Government performs any inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor’s or subcontractor’s premises.

(d) The Government shall accept or reject the work as promptly as practicable after delivery, unless otherwise specified in the contract. Government failure to inspect and accept or reject the work shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming work. Work is nonconforming when it is defective in material or workmanship or is otherwise not in conformity with contract requirements.

(e) The Government has the right to reject nonconforming work. If the Contractor fails or is unable to correct or to replace nonconforming work within the delivery schedule (or such later time as the Contracting Officer may authorize), the Contracting Officer may accept the work and make an equitable price reduction. Failure to agree on a price reduction shall be a dispute.

(f) Inspection and test by the Government does not relieve the Contractor from responsibility for defects or other failures to meet the contract requirements that may be discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or
as otherwise specified in the contract. If acceptance is not conclusive for any of these causes, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies (work) at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule; or (2) within a reasonable time after the Contractor's receipt of notice of defects or nonconformance, to repayment of such portion of the contract price as is equitable under the circumstances if the Government elects not to require correction or replacement. When supplies (work) are (is) returned to the Contractor, the Contractor shall bear transportation costs from the original point of delivery to the Contractor's plant and return to the original point of delivery when that point is not the Contractor's plant.

(End of clause)


52.246-8 Inspection of Research and Development—Cost-Reimbursement.

As prescribed in 46.308, insert the following clause in solicitations and contracts for research and development when (a) the primary objective is the delivery of end items other than designs, drawings, or reports, and (b) a cost-reimbursement contract is contemplated; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate:

**INSPECTION OF RESEARCH AND DEVELOPMENT—COST-REIMBURSEMENT (MAY 2001)**

(a) Definitions. As used in this clause—

Contractor's managerial personnel means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at any one plant or separate location where the contract is being performed; or

(3) A separate and complete major industrial operation connected with performing this contract.

Work includes data when the contract does not include the Warranty of Data clause.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or its subcontractors engaged in the contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs any inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise provided in the contract, the Government shall accept work as promptly as practicable after delivery, and work shall be deemed accepted 90 days after delivery, unless accepted earlier.

(f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under the contract, the Government may require the Contractor to replace or correct work not meeting contract requirements. Time devoted to the replacement or correction of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (h) below, the cost of replacement or correction shall be determined as specified in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Contractor shall not tender for acceptance work required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g)(1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may—

(i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or make an
equitable reduction in any fixed fee paid or payable under the contract;
  (ii) Require delivery of any undelivered articles and shall have the right to make an equitable reduction in any fixed fee paid or payable under the contract; or
  (iii) Terminate the contract for default.

(2) Failure to agree on the amount of increased cost to be charged the Contractor or to the reduction in fixed fee shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or (2) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause shall apply in the same manner to a corrected or replacement end item or components as to work originally delivered.

(j) The Contractor has no obligation or liability under the contract to correct or replace articles not meeting contract requirements at time of delivery, except as provided in this clause or as may otherwise be specified in the contract.

(k) Unless otherwise provided in the contract, the Contractor's obligations to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of clause)

Alternate I (APR 1984). If it is contemplated that the contract will be on a no-fee basis, substitute paragraphs (f) and (g) below for paragraphs (f) and (g) of the basic clause.

(f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under the contract, the Government may require the Contractor to correct or replace work not meeting contract requirements. Time devoted to the correction or replacement of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (g) below, the allowability of the cost of any such replacement or correction shall be determined as specified in the Allowable Cost and Payment clause. The Contractor shall not tender for acceptance corrected work without disclosing the former requirement for correction, and, when required, shall disclose the corrective action taken.

(g) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may (1) by contract or otherwise, perform the replacement or correction and charge to the Contractor any increased cost, (2) require delivery of any undelivered articles, or (3) terminate the contract for default. Failure to agree on the amount of increased cost to be charged to the Contractor shall be a dispute.


52.246-9 Inspection of Research and Development (Short Form).

As prescribed in 46.309, insert the following clause:

INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM) (APR 1984)

The Government has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(End of clause)


52.246-10 [Reserved]

52.246-11 Higher-Level Contract Quality Requirement.

As prescribed in 46.311, insert the following clause:

HIGHER-LEVEL CONTRACT QUALITY REQUIREMENT (FEB 1999)

The Contractor shall comply with the higher-level quality standard selected below. [If more than one standard is listed, the offeror shall indicate its selection by checking the appropriate block.]
Federal Acquisition Regulation

52.246–12 Inspection of Construction.

As prescribed in 46.312, insert the following clause:

**INSPECTION OF CONSTRUCTION (AUG 1996)**

(a) Definition. Work includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not—

1. Relieve the Contractor of responsibility for providing adequate quality control measures;
2. Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
3. Constitute or imply acceptance; or
4. Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) below.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer’s written authorization.

(e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor’s right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government’s rights under any warranty or guarantee.

(End of clause)
52.246–13 Inspection—Dismantling, Demolition, or Removal of Improvements.

As prescribed in 46.313, insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements:

**INSPECTION—DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS (AUG 1996)**

(a) Unless otherwise designated by the specifications, all workmanship performed under the contract is subject to Government inspection at all times and places where dismantling or demolition work is being performed. The Contractor shall furnish promptly, and at no increase in contract price, all reasonable facilities, labor, and materials necessary for safe and convenient inspection by the Government. The Government shall perform inspections in a manner that will not unduly delay the work.

(b) The Contractor is responsible for damage to property caused by defective workmanship. The Contractor shall promptly segregate and remove from the premises any unsatisfactory facilities, materials, and equipment used in contract performance, and promptly replace them with satisfactory items. If the Contractor fails to proceed at once in a workmanlike manner with performance of the work or with the correction of defective workmanship, the Government may (1) by contract or otherwise, replace the facilities, materials, and equipment or correct the workmanship and charge the cost to the Contractor and (2) terminate for default the Contractor’s right to proceed. The Contractor and any surety shall be liable, to the extent specified in the contract for any damage or cost of repair or replacement.

(End of clause)


52.246–15 Certificate of Conformance.

As prescribed in 46.315, insert the following clause in solicitations and contracts for supplies or services when the conditions in 46.504 apply:

**CERTIFICATE OF CONFORMANCE (APR 1984)**

(a) When authorized in writing by the cognizant Contract Administration Office (CAO), the Contractor shall ship with a Certificate of Conformance any supplies for which the contract would otherwise require inspection at source. In no case shall the Government’s right to inspect supplies under the inspection provisions of this contract be prejudiced. Shipments of such supplies will not be made under this contract until use of the Certificate of Conformance has been authorized in writing by the CAO, or inspection and acceptance have occurred.

(b) The Contractor’s signed certificate shall be attached to or included on the top copy of the inspection or receiving report distributed to the payment office or attached to the Certificate of Conformance any supplies for which the contract would otherwise require inspection at source. In no case shall the Government’s right to inspect supplies under the inspection provisions of this contract be prejudiced. Shipments of such supplies will not be made under this contract until use of the Certificate of Conformance has been authorized in writing by the CAO, or inspection and acceptance have occurred.

(c) The Contractor’s signed certificate shall be attached to or included on the top copy of the inspection or receiving report accompanying the shipment.

(d) The certificate shall read as follows:

“[I certify that on ___ [insert date], the ___ [insert Contractor’s name] furnished the supplies or services called for by Contract No. ___ via ___ [Carrier] on ___ [identify the bill of lading or shipping document] in accordance with all applicable requirements. I further certify that the supplies or services are of

[48 FR 42478, Sept. 19, 1983, as amended at 61 FR 31665, June 20, 1996]
the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification (part number), and are in the quantity shown on this or on the attached acceptance document.

Date of Execution:
Signature:
Title: ____________________________

(End of clause)

52.246-16 Responsibility for Supplies.

As prescribed in 46.316, insert the following clause:

RESPONSIBILITY FOR SUPPLIES (APR 1984)

(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon—

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.

(d) Under paragraph (b) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(End of clause)


52.246-17 Warranty of Supplies of a Noncomplex Nature.

As prescribed in 46.710(a)(1), insert a clause substantially as follows:

WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE (JUN 2003)

(a) Definitions. As used in this clause—

Acceptance means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

Supplies means the end items furnished by the Contractor and related services required under this contract. The word does not include “data.”

(b) Contractor’s obligations. (1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for

[Contracting Officer shall state specific period of time after delivery, or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combinations of any applicable events or periods of time]—

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. However, the Contractor’s liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this contract and the Contractor’s plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and fitness for a particular purpose are excluded from any obligation contained in this contract.

(c) Remedies available to the Government. (1) The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within—

[Contracting Officer shall insert specific period of time; e.g., “45 days of the last delivery under this contract,” or “45 days after discovery of the defect”].

(2) Within a reasonable time after the notice, the Contracting Officer may either—
(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances.

(b)(1) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Contracting Officer—

(A) May, for sampling purposes, group any supplies delivered under this contract;

(B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; provided, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Contracting Officer may exercise one or more of the following options:

(A) Require an equitable adjustment in the contract price for any group of supplies.

(B) Screen the supplies grouped for warranty action under this clause at the Contractor’s expense and return all nonconforming supplies to the Contractor for correction or replacement.

(C) Require the Contractor to screen the supplies at locations designated by the Government within the contiguous United States and to correct or replace all nonconforming supplies.

(D) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.

(4) If the Contractor does not agree as to correction or replacement by the Government, the Contracting Office may require an equitable adjustment of the contract price. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor’s account in a reasonable manner. The Government is entitled to reimbursement by any other clause of this contract.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(End of clause)

Alternate I [Reserved]

Alternate II (APR 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government’s expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(2) for paragraph (b)(2) of the basic clause:

(2) If correction or replacement is required, transportation of supplies in connection with correction or replacement is necessary, transportation charges and responsibility for the supplies while in transit shall be borne by the Government.

Alternate III (APR 1984). If the supplies cannot be obtained from another source, substitute a paragraph substantially the same as the following paragraph (c)(4) for paragraph (c)(4) of the basic clause:

(4) If the Contractor does not agree as to responsibility to correct or replace the supplies delivered, the Contractor shall nevertheless proceed in accordance with the written request issued by the Contracting Officer.
52.246–18 Warranty of Supplies of a Complex Nature.

As prescribed in 46.710(b)(1), insert a clause substantially as follows:

WARRANTY OF SUPPLIES OF A COMPLEX NATURE (MAY 2001)

(a) Definitions. As used in this clause—
Acceptance means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

Supplies means the end items furnished by the Contractor and related services required under this contract. The word does not include "data."

(b) Contractor's obligations. (1) The Contractor warrants that for ______ [Contracting Officer shall state the specific warranty period after delivery, or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combinations of any applicable events or periods of time] all supplies furnished under this contract will be free from defects in material and workmanship and will conform with all requirements of this contract; provided, however, that with respect to Government-furnished property, the Contractor's warranty shall extend only to its proper installation, unless the Contractor performs some modification or other work on the property, in which case the Contractor's warranty shall extend to the modification or other work.

(2) Any supplies or parts thereof corrected or furnished in replacement shall be subject to the conditions of this clause to the same extent as supplies initially delivered. This warranty shall be equal in duration to that set forth in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(3) The Contractor shall not be obligated to correct or replace supplies if the facilities, tooling, drawings, or other equipment or supplies necessary to accomplish the correction or replacement have been made unavailable to the Contractor by action of the Government. In the event that correction or replacement has been directed, the Contractor shall promptly notify the Contracting Officer, in writing, of the nonavailability.

(4) The Contractor shall also prepare and furnish to the Government data and reports applicable to any correction required (including revision and updating of all affected data called for under this contract) at no increase in the contract price.

(5) When supplies are returned to the Contractor, the Contractor shall bear the transportation costs from the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant and return.

(6) All implied warranties of merchantability and fitness for a particular purpose are excluded from any obligation contained in this contract.

(c) Remedies available to the Government. (1) In the event of a breach of the Contractor's warranty in paragraph (b)(1) of this clause, the Government may, at no increase in contract price—

(i) Require the Contractor, at the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) or at the Contractor's plant, to repair or replace, at the Contractor's election, defective or nonconforming supplies; or
(ii) Require the Contractor to furnish at the Contractor's plant the materials or parts and installation instructions required to successfully accomplish the correction.

(2) If the Contracting Officer does not require correction or replacement of defective or nonconforming supplies or the Contractor is not obligated to correct or replace under paragraph (b)(2) of this clause, the Government shall be entitled to an equitable reduction in the contract price.

(3) The Contracting Officer shall notify the Contractor in writing of any breach of the warranty in paragraph (b) of this clause within 45 days after delivery of the nonconforming supplies; or, 45 days of the last delivery under this contract; or 45 days after discovery of the defect. The Contractor shall submit to the Contracting Officer a written recommendation within 15 days of receipt of the notice of breach, but not later than 30 days after receipt of the Contractor's recommendation for corrective action, the Contracting Officer may, in writing, correct the direct correction or replacement as in paragraph (c)(1) of this clause, and the Contractor shall, notwithstanding any disagreement regarding the existence of a breach of warranty, comply with this direction. If it is later determined that the Contractor did not breach the warranty in paragraph (b)(1) of this clause, the contract price will be equitably adjusted.

(4) If supplies are corrected or replaced, the period for notification of a breach of the Contractor's warranty in paragraph (c)(3) of this clause shall be the Contractor's recommendation for corrective action required to remedy the breach. After the notice of breach, but not later than 30 days of the receipt of the Contractor's recommendation for corrective action, the Contracting Officer may, in writing, correct or replace the corrected or replaced supplies or parts thereof, or, if correction or replacement is effected by the Contractor at a Government or other activity, for the cost of disassembly and/or reassembly of larger items, add a paragraph substantially the same as the following paragraph (c)(6) to the basic clause:

(5) All costs incurred or estimated to be inurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustments made under paragraph (c)(2) of this clause shall be governed by the paragraph entitled Equitable Adjustments Under Other Clauses in the Incentive Price Revision clause of this contract.

Alternate III (APR 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph (c)(6) to the basic clause:

(6) All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustments made under paragraph (c)(2) of this clause shall be governed by the paragraph entitled Equitable Adjustments Under Other Clauses in the Incentive Price Revision clause of this contract.

Alternate IV (APR 1984). If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, add a paragraph substantially the same as the following paragraph (c)(6) to the basic clause. Designate the additional paragraph as (c)(7) if Alternate III is also used:

(6) The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.


52.246-19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria.

As prescribed in 46.710(c)(1), the contracting officer may insert a clause substantially as follows:

WARRANTY OF SYSTEMS AND EQUIPMENT UNDER PERFORMANCE SPECIFICATIONS OR DESIGN CRITERIA (MAY 2001)

(a) Definitions. As used in this clause—

(End of clause)

Alternate I [Reserved]

Alternate II (APR 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(5) for paragraph (b)(5) of the basic clause:

(5) If correction or replacement is required and transportation of supplies in connection with correction or replacement is necessary, transportation charges and responsibility for the supplies while in transit shall be borne by the Government.

As used in this clause—
Acceptance means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and improved supplies approved or supplies or services furnished by the Contractor under the contract that is not in compliance with the requirements of the contract.

Defect means any condition or characteristic of any supplies or services furnished by the Contractor under the contract that is not in compliance with the requirements of this contract.

Supplies means the end items furnished by the Contractor and related services required under this contract. Except when this contract includes the clause entitled Warranty of Data, supplies also mean “data.”

(b) Contractor’s obligations. (1) The Contractor’s warranties under this clause shall apply only to those defects discovered by either the Government or the Contractor [Contracting Officer shall state the warranty period; e.g., at the time of delivery; within 45 days after delivery, or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combination of any applicable events or periods of time.]

(2) If the Contractor becomes aware at any time before acceptance by the Government (whether before or after tender to the Government) that a defect exists in any supplies or services, the Contractor shall (i) promptly correct the defect or (ii) promptly notify the Contracting Officer, in writing, of the defect, using the same procedures prescribed in paragraph (b)(3) of this clause.

(3) If the Contracting Officer determines that a defect exists in any of the supplies or services accepted by the Government under this contract, the Contracting Officer shall promptly notify the Contractor of the defect, in writing, within [Contracting Officer shall insert the specific period of time in which notice shall be given to the Contractor; e.g., 30 days after delivery of the nonconforming supplies; 90 days of the last delivery under this contract; or 90 days after discovery of the defect.] Upon timely notification of the existence of a defect, or if the Contractor independently discovers a defect in accepted supplies or services, the Contractor shall submit to the Contracting Officer, in writing, within [Contracting Officer shall insert period of time] a recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken.

(4) The Contractor shall promptly comply with any timely written direction from the Contracting Officer to correct or partially correct a defect, at no increase in the contract price.

(5) The Contractor shall also prepare and furnish to the Contracting Officer data and reports applicable to any correction required under this clause (including revision and updating of all other affected data called for under this contract) at no increase in the contract price.

(6) In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall submit a technical and cost proposal within [Contracting Officer shall insert period of time] to amend the contract to permit correction of the affected supplies or services in accordance with the revised requirement, and an equitable reduction in the contract price shall promptly be negotiated by the parties and be reflected in a supplemental agreement to this contract.

(7) Any supplies or parts thereof corrected or furnished in replacement and any services reperformed shall also be subject to the conditions of this clause to the same extent as supplies or services initially accepted. The warranty, with respect to these supplies, parts, or services, shall be equal in duration to the period set forth in paragraph (b)(1) of this clause, and shall run from the date of delivery of the corrected or replaced supplies.

(8) The Contractor shall not be responsible under this clause for the correction of defects in Government-furnished property, except for defects in installation, unless the Contractor performs, or is obligated to perform, any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of defects that result from the modifications or other work.

(9) If the Government returns supplies to the Contractor for correction or replacement under this clause, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the place of delivery specified in this contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor’s plant and return to the place of delivery specified in this contract. The Contractor shall also bear the responsibility for the supplies while in transit.

(10) All implied warranties of merchantability and fitness for a particular purpose are excluded from any obligation under this contract.

(c) Remedies available to the Government. (1) The rights and remedies of the Government provided in this clause—

(i) Shall not be affected in any way by any terms or conditions of this contract concerning the conclusiveness of inspection and acceptance; and

(ii) Are in addition to, and do not limit, any rights afforded to the Government by any other clause of this contract.

(2) Within [Contracting Officer shall insert period of time] after receipt of the Contractor’s recommendations for corrective action and adequate supporting information,
the Contracting Officer, using sole discretion, shall give the Contractor written notice not to correct any defect, or to correct or partially correct any defect within a reasonable time. (Contracting Officer shall insert locations where corrections may be performed).

3 In no event shall the Government be responsible for any extension or delays in the scheduled deliveries or periods of performance under this contract as a result of the Contractor’s obligations to correct defects, nor shall there be any adjustment of the delivery schedule or period of performance as a result of the correction of defects unless provided by a supplemental agreement with adequate consideration.

4 This clause shall not be construed as obligating the Government to increase the contract price.

5(i) The Contracting Officer shall give the Contractor a written notice, specifying any failure or refusal of the Contractor to—

(A) Present a detailed recommendation for corrective action as required by paragraph (b)(3) of this clause;
(B) Correct defects as directed under paragraph (b)(4) of this clause; or
(C) Prepare and furnish data and reports as required by paragraph (b)(5) of this clause.

(ii) The notice shall specify a period of time following receipt of the notice by the Contractor in which the Contractor must remedy the failure or refusal specified in the notice.

(B) If the Contractor does not comply with the Contracting Officer’s written notice in paragraph (c)(5)(i) of this clause, the Contracting Officer may by contract or otherwise—

(i) Obtain detailed recommendations for corrective action and either—

(A) Correct the supplies or services; or
(B) Replace the supplies or services, and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor’s account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor, or from the proceeds, for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred;

(ii) Obtain applicable data and reports; and
(iii) Charge the Contractor for the costs incurred by the Government.

(End of clause)

Alternate I (APR 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government’s expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(9) for paragraph (b)(9) of the basic clause:

9 If correction or replacement is required, and transportation of supplies in connection with correction or replacement is necessary, transportation charges and responsibility for the supplies while in transit shall be borne by the Government.

Alternate II (APR 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph (c)(7) to the basic clause:

7 All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustments made under paragraph (b)(6) of this clause shall be governed by the paragraph entitled Equitable Adjustments Under Other Clauses in the Incentive Price Revision clause of this contract.

Alternate III (APR 1984). If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, add a paragraph substantially the same as the following paragraph (c)(7) to the basic clause. Redesignate the additional paragraph as (c)(8) if Alternate II is also being used:

7 The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

52.246-20 Warranty of Services.

As prescribed in 46.710(d), insert a clause substantially as follows:

Warranty of Services (MAY 2001)

(a) Definitions. Acceptance, as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.
(b) Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor—

(Contracting Officer shall insert the specific period of time in which notice shall be given to the Contractor; e.g., within 30 days from the date of acceptance by the Government; within 1000 hours of use by the Government; or other specified event whose occurrence will terminate the period of notice, or combination of any applicable events or period of time). This notice shall state either (1) that the Contractor shall correct or reperform any defective or nonconforming services, or (2) that the Government does not require correction or reperformance.

(c) If the Contractor is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government thereby, or make an equitable adjustment in the contract price.

(d) If the Government does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price.

(End of clause)


52.246–21 Warranty of Construction.

As prescribed in 46.710(e)(1), the contracting officer may insert a clause substantially as follows in solicitations and contracts when a fixed-price construction contract (see 46.705(c)) is contemplated, and the use of a warranty clause has been approved under agency procedures:

WARRANTY OF CONSTRUCTION (APR 1984)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor’s expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor’s expense any damage to Government-owned or controlled real or personal property, when that damage is the result of—

(1) The Contractor’s failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor’s warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor’s expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall—

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor’s warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor’s, manufacturer’s, or supplier’s warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government’s rights under the Inspection and
52.246–22

Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of clause)

Alternate I (APR 1984). If the Government specifies in the contract the use of any equipment by brand name and model, the contracting officer may add a paragraph substantially the same as the following paragraph (k) to the basic clause:

(k) Defects in design or manufacture of equipment specified by the Government on a brand name and model basis, shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the Government.


52.246–22 [Reserved]

52.246–23 Limitation of Liability.

As prescribed in 46.805, insert the following clause:

LIMITATION OF LIABILITY—HIGH-VALUE ITEMS

(See 46.805, for definition of high-value items.)

52.246–24 Limitation of Liability—High-Value Items.

As prescribed in 46.805, insert the following clause:

LIMITATION OF LIABILITY—HIGH-VALUE ITEMS

(See 46.805, for definition of high-value items.)

(a) Except as provided in paragraphs (b) through (e) below, and notwithstanding any other provision of this contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this contract) that (1) occurs after Government acceptance of the supplies delivered under this contract and (2) results from any defects or deficiencies in the supplies.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government’s acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor’s managerial personnel. The term Contractor’s managerial personnel, as used in this clause, means the Contractor’s directors, officers, and any of the Contractor’s managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor’s business;

(2) All or substantially all of the Contractor’s operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

(End of clause)

Federal Acquisition Regulation

from any defects or deficiencies in, the supplies delivered under this contract.

(d)(1) This clause does not diminish the Contractor's obligations, to the extent that they arise otherwise under this contract, relating to correction, repair, replacement, or other relief for any defect or deficiency in supplies delivered under this contract.

(2) Unless this is a cost-reimbursement contract, if loss or damage occurs and correction, repair, or replacement is not feasible or desired by the Government, the Contractor shall, as determined by the Contracting Officer—

(i) Pay the Government the amount it would have cost the Contractor to make correction, repair, or replacement before the loss or damage occurred; or

(ii) Provide other equitable relief.

(e) This clause shall not limit or otherwise affect the Government's rights under clauses, if included in this contract, that cover—

(1) Warranty of technical data;

(2) Ground and flight risks or aircraft flight risks; or

(3) Government property.

(End of clause)

Alternate I (APR 1984). If the contract is for both high-value items and other end items, the contracting officer shall identify the high-value items by line item and insert the following preamble before paragraph (a):

(This clause shall apply only to those items identified in this contract as being subject to this clause.)


52.246-25 Limitation of Liability—Services.

As prescribed in 46.805, insert the following clause:

LIMITATION OF LIABILITY—SERVICES (FEB 1997)

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Government acceptance of services performed under this contract and (2) results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term Contractor's managerial personnel, as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(End of clause)


52.247-1 Commercial Bill of Lading Notations.

As prescribed in 47.104-4, insert the following clause:

COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006)

When the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(a) If the Government is shown as the consignor or the consignee, the annotation shall be: “Transportation is for the [name the specific agency] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government.”
52.247–2 Permits, Authorities, or Franchises.

As prescribed in 47.207–1(a), insert the following clause:

PERMITS, AUTHORITIES, OR FRANCHISES (JAN 1997)

(a) The offeror does ☐, does not ☐, hold authorization from the Federal Highway Administration (FHWA) or other cognizant regulatory body. If authorization is held, it is as follows:

(Name of regulatory body)

( Authorization No.)

(b) The offeror shall furnish to the Government, if requested, copies of the authorization before moving the material under any contract awarded. In addition, the offeror shall, at the offeror’s expense, obtain and maintain any permits, franchises, licenses, and other authorities issued by State and local governments.

(End of clause)


52.247–3 Capability To Perform a Contract for the Relocation of a Federal Office.

As prescribed in 47.207–1(b), insert the following clause in solicitations and contracts for transportation or for transportation-related services when a Federal office is relocated, to ensure that offerors are capable to perform interstate or intrastate moving contracts involving the relocation of Federal offices:

CAPABILITY TO PERFORM A CONTRACT FOR THE RELOCATION OF A FEDERAL OFFICE (FEB 2006)

(a) If the move specified in this contract is to be performed by the Contractor as a carrier wholly within the borders of one State, including the District of Columbia, (i.e., an intrastate move), the Contractor shall have obtained and hold appropriate and current operating authority from the Federal Motor Carrier Safety Administration.

(b)(1) If the move specified in this contract is to be performed by the Contractor as a carrierr within the borders of more than one State, including the District of Columbia, (i.e., an interstate move), the Contractor shall have obtained and hold appropriate and current operating authority from that jurisdiction in the form of a certificate, permit, or equivalent license to operate.

(2) If no authority to operate is required by the State or the District of Columbia, the Contractor as carrier shall maintain facilities, equipment, and a business address within the jurisdiction in which the move is to take place. However, if the move is to originate and/or terminate within an area of one State, or the District of Columbia, that comprises a part of a recognized Commercial Zone (see Subpart B of 49 CFR part 372) the boundaries of which encompass portions of more than one State or the District of Columbia, it shall be sufficient if the Contractor as carrier maintains facilities, equipment, and a business address within the Commercial Zone and holds appropriate operating authority. If required, from the jurisdiction within which the Contractor maintains the facilities, equipment, and business address.

(c) If the move specified in this contract will not be performed by the Contractor as carrier, it must be performed for the Contractor by a carrier operating under a subcontract with the Contractor. In this case, the Contractor shall not be subject to the requirements of paragraphs (a) and (b) above, but shall be responsible for requiring and ensuring that the subcontractor carrier complies with those requirements in every respect.

(d) The Contractor shall be in compliance with the applicable requirements of this clause at least 14 days before the date on which performance of the contract shall commence under the terms specified; except that, if the period from the date of award of the contract to the date that performance shall commence is less than 28 days, the Contractor shall comply with the applicable requirements of this clause midway between
the time of award and the time of commencement of performance.

(End of clause)

Alternate I (APR 1984). If a Federal office move is intrastate and the contracting officer determines that it is in the Government’s interest not to apply the requirements for holding or obtaining State authority to operate within the State, and to maintain a facility within the State or Commercial zone, delete paragraph (b) of the basic clause and redesignate the remaining paragraphs (b) and (c). In the 6th line of the new paragraph (b), delete the words paragraphs (a) and (b) above and replace them with paragraph (a) above.


52.247–4 Inspection of Shipping and Receiving Facilities.

As prescribed in 47.207–1(c), insert the following provision in solicitations for transportation or for transportation-related services when it is desired for offerors to inspect the shipping, receiving, or other sites to ensure realistic bids:

INSPECTION OF SHIPPING AND RECEIVING FACILITIES (APR 1984)

(a) Offerors are urged to inspect the shipping and receiving facilities where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance.

(b) Site visits have been scheduled as follows:

(locations) __________________________

dates) __________________________

times) __________________________

(c) For further information offerors may contact:

(name) __________________________

(telephone) __________________________

(End of provision)

52.247–5 Familiarization With Conditions.

As prescribed in 47.207–1(d), insert the following clause in solicitations and contracts for transportation or for transportation-related services to ensure that offerors become familiar with conditions under which and where the services will be performed:

FAMILIARIZATION WITH CONDITIONS (APR 1984)

The offeror shall become familiar with all available information regarding difficulties that may be encountered and the conditions, including safety precautions, under which the work must be accomplished under the contract. The offeror shall not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required in this contract because the offeror failed to investigate the conditions or to become acquainted with all information concerning the services to be performed.

(End of clause)

52.247–6 Financial Statement.

As prescribed in 47.207–1(e), insert the following provision in solicitations for transportation or for transportation-related services to ensure that offerors are prepared to furnish financial statements:

FINANCIAL STATEMENT (APR 1984)

The offeror shall, upon request, promptly furnish the Government with a current certified statement of the offeror’s financial condition and such data as the Government may request with respect to the offeror’s operations. The Government will use this information to determine the offeror’s financial responsibility and ability to perform under the contract. Failure of an offeror to comply with a request for information will subject the offer to possible rejection on responsibility grounds.

(End of provision)

52.247–7 Freight Excluded.

As prescribed in 47.207–3(d)(2), insert a clause substantially as follows in solicitations and contracts for transportation or for transportation-related services when any commodities or types of shipments have been identified for exclusion:

FREIGHT EXCLUDED (APR 1984)

Excluded from the scope of this contract are shipments that can be more advantageously or economically moved via parcel post or small package carrier; shipments of unusual value, explosives and other dangerous articles, household goods, commodities in bulk, commodities injurious or contaminating to other freight; and shipments that the Government may elect to move in Government vehicles.
52.247–8 Estimated Weights or Quantities Not Guaranteed.

As prescribed in 47.207–3(e)(2), insert the following clause in solicitations and contracts for transportation or for transportation-related services when weights or quantities are estimates:

ESTIMATED WEIGHTS OR QUANTITIES NOT GUARANTEED (APR 1984)

The estimated weights or quantities are not a guarantee of actual weights or quantities, as the Government does not guarantee any particular volume of traffic described in this contract. However, to the extent services are required as described in this contract and in accordance with the terms of this contract, orders for these services will be placed with the Contractor.

(End of clause)

52.247–9 Agreed Weight—General Freight.

As prescribed in 47.207–4(a)(1), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the shipping activity determines the weight of shipments of freight other than household goods or office furniture:

AGREED WEIGHT—GENERAL FREIGHT (APR 1984)

The shipping activity shall determine the weight of each shipment. The weight shall be shown on the covering shipping document and shall be accepted by the Contractor as the agreed weight.

(End of clause)

52.247–10 Net Weight—General Freight.

As prescribed in 47.207–4(a)(2), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the weight of shipments of freight other than household goods or office furniture is not known at the time of shipment and the contractor is responsible for determining the net weight of the shipments:

NET WEIGHT—GENERAL FREIGHT (APR 1984)

(a) The net weight of the shipment shall be determined by deducting the tare weight of the vehicle (determined by having the empty vehicle with a full tank of fuel weighed by a certified weighmaster on a certified scale) from the gross weight of the vehicle (determined by having the loaded vehicle with a full tank of fuel weighed by a certified weighmaster on a certified scale).

(b) The Contractor shall attach the original copies of the empty and loaded weight certificates to the invoice for services.

(End of clause)

52.247–11 Net Weight—Household Goods or Office Furniture.

As prescribed in 47.207–4(b), insert the following clause in contracts for transportation or for transportation-related services when movements of Government employees' household goods or relocations of Government offices are involved:

NET WEIGHT—HOUSEHOLD GOODS OR OFFICE FURNITURE (APR 1984)

(a) Net weight—full loads. The net weight of the shipment shall be determined by deducting the tare weight of the vehicle (determined by having a certified weighmaster weigh on a certified scale the empty vehicle with all blankets, pads, chains, dollies, hand trucks, and all other necessary equipment inside the vehicle) from the gross weight of the vehicle (determined by having a certified weighmaster weigh on a certified scale the fully loaded vehicle before arrival at destination).

(b) Net weight—part loads. The net weight of the first part load shall be determined in the same manner as specified for a full load. The net weight of the second part load shall be determined by using as the tare weight of the vehicle the gross weight of the vehicle containing the first part load and deducting this weight from the new gross weight (determined by having the loaded vehicle weighed again, in the same manner as specified for the full load). The same procedure shall apply for each succeeding part load.

(c) Weight certificates. The contractor shall attach the original copy of each weight certificate to the invoice for services.

(End of clause)

52.247–12 Supervision, Labor, or Materials.

As prescribed in 47.207–5(b), insert a clause substantially as follows in solicitations and contracts for transportation or for transportation-related services when the contractor is required to furnish supervision, labor, or materials: 
FEDERAL ACQUISITION REGULATION

52.247-16 CONTRACTOR RESPONSIBILITY FOR RETURNING UNDELIVERED FREIGHT

As prescribed in 47.207-5(f), insert the following clause in solicitations and contracts for transportation or for transportation-related services:

CONTRACTOR RESPONSIBILITY FOR RETURNING UNDELIVERED FREIGHT (APR 1984)

(a) When, through no fault of the Contractor, a shipment cannot be delivered, the Contractor shall contact the shipper for disposition instructions. If the shipment is ordered returned to the origin point, the charges assessed for the return trip shall be the same as the charges assessed for the outbound trip. The shipper shall maintain a

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52.247–17 Charges.

As prescribed in 47.207–6(a)(2), insert the following clause in solicitations and contracts for transportation or for transportation-related services:

CHARGES (APR 1984)

In no event shall charges under this contract be in excess of charges based on the Contractor's lowest rate available to the general public, or be in excess of charges based on rates otherwise tendered to the Government by the Contractor for the same type of service.

(End of clause)

52.247–18 Multiple Shipments.

As prescribed in 47.207–6(c)(5)(i), insert the following clause in solicitations and contracts for transportation or for transportation-related services when multiple shipments are tendered at one time to the contractor for transportation from one origin to two or more consignees at the same destination:

MULTIPLE SHIPMENTS (APR 1984)

When multiple shipments are tendered at one time to the Contractor for movement from one origin to multiple consignees at the same destination, the rate charged shall be the rate applicable to the aggregate weight.

(End of clause)

52.247–19 Stopping in Transit for Partial Unloading.

As prescribed in 47.207–6(c)(5)(ii), insert the following clause in solicitations and contracts for transportation or for transportation-related services when multiple shipments are tendered at one time to the contractor for transportation from one origin to two or more consignees along the route between origin and last destination:

STOPPING IN TRANSIT FOR PARTIAL UNLOADING (APR 1984)

When multiple shipments are tendered at one time to the Contractor for movement from one origin to two or more consignees along the route between the origin and the last destination, the rate charged shall be the rate applicable to the aggregate weight, plus a charge of $ _ _ _ for each shipment unloaded at an intermediate point en route to the last destination.

(End of clause)

52.247–20 Estimated Quantities or Weights for Evaluation of Offers.

As prescribed in 47.207–6(c)(6), insert the following provision in solicitations for transportation or for transportation-related services when quantities or weights of shipments between each origin and destination are not known, stating estimated quantity or weight for each origin/destination pair:

ESTIMATED QUANTITIES OR WEIGHTS FOR EVALUATION OF OFFERS (APR 1984)

For the purpose of evaluating offers, and for no other purpose, the following estimated quantities or weights will be considered as the quantities or weights to be shipped between each origin and destination listed:

<table>
<thead>
<tr>
<th>Origin</th>
<th>Destination</th>
<th>Estimated quantity or weight</th>
</tr>
</thead>
</table>

(End of provision)

52.247–21 Contractor Liability for Personal Injury and/or Property Damage.

As prescribed in 47.207–7(c), insert the following clause in solicitations and contracts for transportation or for transportation-related services:

CONTRACTOR LIABILITY FOR PERSONAL INJURY AND/OR PROPERTY DAMAGE (APR 1984)

(a) The Contractor assumes responsibility for all damage or injury to persons or property occasioned through the use, maintenance, and operation of the Contractor's vehicles or other equipment by, or the action
Federal Acquisition Regulation

52.247–25

of, the Contractor or the Contractor’s employees and agents.

(b) The Contractor, at the Contractor’s expense, shall maintain adequate public liability and property damage insurance during the continuance of this contract, insuring the Contractor against all claims for injury or damage.

(c) The Contractor shall maintain Workers’ Compensation and other legally required insurance with respect to the Contractor’s own employees and agents.

(d) The Government shall in no event be liable or responsible for damage or injury to any person or property occasioned through the use, maintenance, or operation of any vehicle or other equipment by, or the action of, the Contractor or the Contractor’s employees and agents in performing under this contract, and the Government shall be indemnified and saved harmless against claims for damage or injury in such cases.

(End of clause)

52.247–22 Contractor Liability for Loss of and/or Damage to Freight Other Than Household Goods.

As prescribed in 47.207–7(d), insert the following clause in solicitations and contracts for the transportation of freight other than household goods:

CONTRACTOR LIABILITY FOR LOSS OF AND/OR DAMAGE TO FREIGHT OTHER THAN HOUSEHOLD GOODS (APR 1984)

Except when loss and/or damage arises out of causes beyond the control and without the fault or negligence of the Contractor, the Contractor shall assume full liability for any and all goods lost and/or damaged in the movement covered by this contract.

(End of clause)

52.247–23 Contractor Liability for Loss of and/or Damage to Household Goods.

As prescribed in 47.207–7(e), insert the following clause:

CONTRACTOR LIABILITY FOR LOSS OF AND/OR DAMAGE TO HOUSEHOLD GOODS (JAN 1991)

(a) Except when loss and/or damage arise out of causes beyond the control and without the fault or negligence of the Contractor, the Contractor shall be liable to the owner for the loss of and/or damage to any article while being—

(1) Packed, picked up, loaded, transported, delivered, unloaded, or unpacked;

(2) Stored in transit; or

(3) Serviced (appliances, etc.) by a third person hired by the Contractor to perform the servicing.

(b) The Contractor shall be liable for loss and/or damage discovered by the owner if written notice of such loss and/or damage is dispatched to the Contractor not later than 75 days following the date of delivery.

(c) The Contractor shall indemnify the owner of the goods at a rate of __ cents per pound per article.

(End of clause)

52.247–24 Advance Notification by the Government.

As prescribed in 47.207–8(a)(1), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the Government is responsible for notifying the contractor of specific service times or unusual shipments:

ADVANCE NOTIFICATION BY THE GOVERNMENT (APR 1984)

The Government will notify the Contractor ___ hours in advance of the number of pieces and weight of all normal shipments and the time the shipment will be available for pick-up. On other-than-normal shipments, the Government will furnish additional information; e.g., dimension of oversized pieces, as necessary to determine the amount of equipment and/or manpower needed to perform the required services.

(End of clause)

52.247–25 Government-Furnished Equipment With or Without Operators.

As prescribed in 47.207–8(a)(2)(i), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the Government furnishes equipment with or without operators:

GOVERNMENT-FURNISHED EQUIPMENT WITH OR WITHOUT OPERATORS (APR 1984)

The Government will provide ___ [insert equipment; e.g., forklifts] with or without operators at __ [strike out with or without, as applicable, and insert origin, destination, or both] to assist in __ [insert loading, unloading, or both], when required.
(End of clause)

52.247–26 Government Direction and Marking.

As prescribed in 47.207–8(a)(3), insert the following clause in solicitations and contracts for transportation or for transportation-related services when office relocations are involved:

**GOVERNMENT DIRECTION AND MARKING (APR 1984)**

The agency being relocated shall tag or mark property, showing floor, room number, and location where property is to be placed in the new building. The agency shall provide sufficient personnel to direct the Contractor’s personnel in the placement of the property at destination.

(End of clause)

52.247–27 Contract Not Affected by Oral Agreement.

As prescribed in 47.207–8(b), insert the following clause in solicitations and contracts for transportation or for transportation-related services:

**CONTRACT NOT AFFECTED BY ORAL AGREEMENT (APR 1984)**

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Contracting Officer or an authorized representative.

(End of clause)

52.247–28 Contractor’s Invoices.

As prescribed in 47.207–9(c), insert the following clause in solicitations and contracts for drayage or other term contracts for transportation or for transportation-related services:

**CONTRACTOR’S INVOICES (APR 1984)**

The Contractor shall submit itemized invoices as instructed by the agency ordering services under this contract. The Contractor shall annotate each invoice with the contract number and other ordering office document identification.

(End of clause)


As prescribed in 47.303–1(c), insert the following clause:

**F.O.B. ORIGIN (FEB 2006)**

(a) The term f.o.b. origin, as used in this clause, means free of expense to the Government delivered—

(1) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipment will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(2) To, and placed on, the carrier’s wharf (at shipside, within reach of the ship’s loading tackle, when the shipping point is within a port area having water transportation service) or the carrier’s freight station;

(3) To a U.S. Postal Service facility; or

(4) If stated in the solicitation, to any Government designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372).

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier’s conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing and marking; or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier’s conveyance;

(5) Complete the Government bill of lading supplied by the ordering agency or, when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;
Federal Acquisition Regulation

52.247-30 F.O.B. ORIGIN, CONTRACTOR'S FACILITY

As prescribed in 47.303-2(c), insert the following clause in solicitations and contracts when the delivery term is F.O.B. origin, contractor's facility:

F.O.B. ORIGIN, CONTRACTOR'S FACILITY (FEB 2006)

(a) The term F.O.B. origin, contractor's facility, as used in this clause, means free of expense to the Government delivered on board the indicated type of conveyance of the carrier (or of the Government, if specified) at the designated facility, on the named street or highway, in the city, county, and State from which the shipment will be made.

(b) The Contractor shall—

(1) Pack and mark the shipment to comply with contract specifications; or

(2) If not specified, order appropriate carrier equipment in excess of capacity to accommodate shipment;

(c) These Contractor responsibilities are specified for performance at the plant or facilities at which the supplies are to be finally inspected and accepted, unless the facilities for shipment by carrier's equipment are not available at the Contractor's plant, in which case the responsibilities shall be performed F.O.B. the point or points in the same or nearest city where the specified carrier's facilities are available; subject, however, to the following qualifications:

(1) If the Contractor's shipping plant is located in the State of Alaska or Hawaii, the Contractor shall deliver the supplies listed for shipment outside Alaska or Hawaii to the port of loading in Alaska or Hawaii, respectively, as specified in the contract, at Contractor's expense, and to that extent the contract shall be F.O.B. destination.

(2) Notwithstanding subparagraph (c)(1) of this clause, if the Contractor's shipping plant is located in the State of Hawaii and the contract requires delivery to be made by container service, the Contractor shall deliver the supplies, at the Contractor's expense, to the container yard in the same or nearest city where seaway container service is available.

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) or in the carrier's conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing and marking; or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor or in the carrier's conveyance;

(5) Complete the Government bill of lading supplied by the ordering agency or, when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(4) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for bills of lading; e.g., “This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government”; and

(vi) The signature of the carrier's agent and the date the shipment is received by the carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

(EoC)
(End of clause)


As prescribed in 47.303–3(c), insert the following clause:

F.O.B. ORIGIN, FREIGHT ALLOWED (FEB 2006)

(a) The term "f.o.b. origin, freight allowed," as used in this clause, means—

(i) Free of expense to the Government delivered—

(ii) To, and placed on, the carrier’s wharf (at shipside within reach of the ship’s loading tackle when the shipping point is within a port area having water transportation service) or the carrier’s freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract, the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372; and

(b) An allowance for freight, based on applicable published tariff rates (or Government rate tenders) between the points specified in the contract, is deducted from the contract price.

(c) The Contractor shall—

(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(iii) Order specified carrier equipment when requested by the Government; or

(iv) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(v) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier’s conveyance as required by carrier rules and regulations;

(vi) Distribute the copies of the bill of lading—

(i) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(ii) To, and placed on, the carrier’s wharf (at shipside within reach of the ship’s loading tackle when the shipping point is within a port area having water transportation service) or the carrier’s freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract, the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372; and

(v) Complete the Government bill of lading, as directed by the ordering agency for commercial bills of lading; e.g., “This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government”;

(vi) The signature of the carrier’s agent of the carrier’s equipment or the carrier’s responsible individual.

(d) The Contractor shall—

(i) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier’s conveyance;

(ii) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract, the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372; and

(e) The Contractor shall—

(i) Deliver the supplies, at Contractor’s expense, to the container yard in the same or nearest city where seavon container service is available.

(f) The Contractor shall—

(i) Deliver the supplies, at Contractor’s expense, to the container yard in the same or nearest city where seavon container service is available.

(End of clause)
Federal Acquisition Regulation

(End of clause)


As prescribed in 47.303-4(c), insert the following clause:

**F.O.B. ORIGIN, FREIGHT PREPAID (FEB 2006)**

(a) The term "f.o.b. origin, freight prepaid, as used in this clause, means—
   (1) Free of expense to the Government delivered—
      (i) On board the indicated type of conveyance of the carrier (or of the Government if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;
      (ii) To, and placed on, the carrier’s wharf (at shipside, within reach of the ship’s loading tackle, when the shipping point is within a port area having water transportation service) or the carrier’s freight station;
      (iii) To a U.S. Postal Service facility; or
      (iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and
   (2) The cost of transportation, ultimately the Government’s obligation, is prepaid by the contractor to the point specified in the contract.

(b) The Contractor shall—
   (1)(i) Pack and mark the shipment to comply with contract specifications; or
   (ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;
   (2)(i) Order specified carrier equipment when requested by the Government; or
   (ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;
   (3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier’s conveyance as required by carrier rules and regulations;
   (4) Be responsible for any loss of and/or damage to the goods—
      (i) Occurring before delivery to the carrier;
      (ii) Resulting from improper packing or marking; or
      (iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier’s conveyance;
   (5) Prepare a bill of lading or other transportation receipt. The bill of lading shall show—
      (i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;
      (ii) The seals affixed to the conveyance with their serial numbers or other identification;
      (iii) Lengths and capacities of cars or trucks ordered and furnished;
      (iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;
      (v) Special instructions or annotations requested by the ordering agency for bills of lading; e.g., “This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government”; and
      (vi) The signature of the carrier’s agent and the date the shipment is received by the carrier;
   (6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency; and
   (7) Prepay all freight charges to the extent specified in the contract.

(c) These Contractor responsibilities are specified for performance at the plant or plants at which these supplies are to be finally inspected and accepted, unless the facilities for shipment by carrier’s equipment are not available at the Contractor’s plant, in which case the responsibilities shall be performed f.o.b. the point or points in the same or nearest city where the specified carrier’s facilities are available; subject, however, to the following qualifications:

(1) If the Contractor’s shipping plant is located in the State of Alaska or Hawaii, the Contractor shall deliver the supplies listed for shipment outside Alaska or Hawaii to the port of loading in Alaska or Hawaii, respectively, as specified in the contract, at Contractor’s expense, and to that extent the contract shall be f.o.b. destination.

(2) Notwithstanding subparagraph (c)(1) of this clause, if the Contractor’s shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by container service, the Contractor shall deliver the supplies, at the Contractor’s expense to the container yard in the same or nearest city where seavan container service is available.

(End of clause)
52.247–33  F.o.b. Origin, With Differentials.

As prescribed in 47.303–5(c), insert the following clause:

F.O.B. ORIGIN, WITH DIFFERENTIALS (FEB 2006)

(a) The term f.o.b. origin, with differentials, as used in this clause, means—

(1) Free of expense to the Government delivered—

(i) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(ii) To, and placed on, the carrier’s wharf (at shipside, within reach of the ship’s loading tackle, when the shipping point is within a port area having water transportation service) or the carrier’s freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and

(2) Differentials for mode of transportation, type of vehicle, or place of delivery as indicated in Contractor’s offer may be added to the contract price.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specification; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) or in the carrier’s conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing and marking; or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier’s conveyance;

(5) Complete the Government bill of lading supplied by the ordering agency or, when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for bills of lading; e.g., “This shipment is the property of, and the freight charges paid to the carrier will be reimbursed by, the Government”; and

(vi) The signature of the carrier’s agent and the date the shipment is received by carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

(c)(1) It may be advantageous to the offeror to submit f.o.b. origin prices that include only the lowest cost to the Contractor for loading of shipment at the Contractor’s plant or most favorable shipping point. The cost beyond that plant or point of bringing the supplies to the place of delivery and the cost of loading, blocking, and bracing on the type vehicle specified by the Government at the time of shipment may exceed the offeror’s lowest cost when the offeror ships for the offeror’s account. Accordingly, the offeror may indicate differentials that may be added to the offered price. These differentials shall be expressed as a rate in cents for each 100 pounds (CWT) of the supplies for one or more of the options under this clause that the Government may specify at the time of shipment.

(2) These differential(s) will be considered in the evaluation of offers to determine the lowest overall cost to the Government. If, at the time of shipment, the Government specifies a mode of transportation, type of vehicle, or place of delivery for which the offeror has set forth a differential, the Contractor shall include the total of such differential costs (the applicable differential multiplied by the actual weight) as a separate reimbursable item on the Contractor’s invoice for the supplies.

(3) The Government shall have the option of performing or arranging at its own expense any transportation from Contractor’s shipping plant or point to carrier’s facility at the time of shipment and, whenever this option is exercised, the Government shall
Federal Acquisition Regulation

52.247–35 F.o.b. Destination.

As prescribed in 47.303–6(c), insert the following clause:

F.O.B. DESTINATION (JAN 1991)

(a) The term f.o.b. destination, as used in this clause, means—

(1) Free of expense to the Government, on board the carrier’s conveyance, at a specified delivery point where the consignee’s facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee’s wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or “constructive placement” as defined in carrier tariffs) or the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including “piggyback”) is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for “heavy or bulky freight.” When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the contractor uses rail carrier or freight forwarder for less than carload shipments, the contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

(End of clause)


52.247–35 F.o.b. Destination, Within Consignee’s Premises.

As prescribed in 47.303–7(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. destination, within consignee’s premises:

F.O.B. DESTINATION, WITHIN CONSIGNEE’S PREMISES (APR 1984)

(a) The term f.o.b. destination, within consignee’s premises, as used in this clause, means free of expense to the Government delivered and laid down within the doors of the consignee’s premises, including delivery to specific rooms within a building if so specified.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.
52.247–36  F.a.s. Vessel, Port of Shipment.

As prescribed in 47.303–8(c), insert the following clause in solicitations and contracts when the delivery term is f.a.s. vessel, port of shipment:

F.A.S. VESSEL, PORT OF SHIPMENT (APR 1984)

(a) The term f.a.s. vessel, port of shipment, as used in this clause, means free of expense to the Government delivered alongside the ocean vessel and within reach of its loading tackle at the specified port of shipment.

(b) The Contractor shall—
(1)(i) Pack and mark the shipment to comply with contract specifications; or
(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;
(2)(i) Deliver the shipment on board the ocean vessel in good order and condition on the date or within the period fixed; and
(ii) Pay and bear all charges incurred in placing the shipment actually on board;
(3) Provide a clean ship’s receipt or on-board ocean bill of lading;
(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment on board the ocean vessel; and
(5) At the Government’s request and expense, assist in obtaining the documents required for (i) exportation or (ii) importation at destination.

(End of clause)

52.247–37  F.o.b. Vessel, Port of Shipment.

As prescribed in 47.303–9(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. vessel, port of shipment:

F.O.B. VESSEL, PORT OF SHIPMENT (APR 1984)

(a) The term f.o.b. vessel, port of shipment, as used in this clause, means free of expense to the Government loaded, stowed, and trimmed on board the ocean vessel at the specified port of shipment.

(b) The Contractor shall—
(1)(i) Pack and mark the shipment to comply with contract specifications; or
(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;
(2)(i) Deliver the shipment on board the ocean vessel in good order and condition on the date or within the period fixed; and
(ii) Pay and bear all charges incurred in placing the shipment actually on board;
(3) Provide a clean dock or ship’s receipt;
(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment on board the ocean vessel; and
(5) At the Government’s request and expense, assist in obtaining the documents required for (i) exportation or (ii) importation at destination.

(End of clause)

52.247–38  F.o.b. Inland Carrier, Point of Exportation.

As prescribed in 47.303–10(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. inland carrier, point of exportation:

F.O.B. INLAND CARRIER, POINT OF EXPORTATION (FEB 2006)

(a) The term f.o.b. inland carrier, point of exportation, as used in this clause, means free of expense to the Government, on board the conveyance of the inland carrier, delivered to the specified point of exportation.

(b) The Contractor shall—
(1)(i) Pack and mark the shipment to comply with contract specifications; or
(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;
(2) Prepare and distribute commercial bills of lading or other transportation receipt;
(3)(i) Deliver the shipment in good order and condition in or on the conveyance of the carrier on the date or within the period specified; and
(ii) Pay and bear all applicable charges, including transportation costs, to the point of delivery specified in the contract;
(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery specified in the contract; and
(5) At the Government’s request and expense, assist in obtaining the documents required for (i) exportation or (ii) importation at destination.
52.247-39 F.o.b. Inland Point, Country of Importation.

As prescribed in 47.303–11(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. inland point, country of importation:

F.O.B. INLAND POINT, COUNTRY OF IMPORTATION (APR 1984)

(a) The term f.o.b. inland point, country of importation, as used in this clause, means free of expense to the Government, on board the indicated type of conveyance of the carrier, delivered to the specified inland point where the consignee’s facility is located.

(b) The Contractor shall—

1(i) Pack and mark the shipment to comply with contract specifications; or

1(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods;

2(i) Deliver, in or on the inland carrier’s conveyance, the shipment in good order and condition to the specified inland point where the consignee’s facility is located; and

2(ii) Pay and bear all applicable charges incurred up to the point of delivery, including transportation costs; export, import, or other fees or taxes; costs of wharfage and landing, if any; customs duties; and costs of certificates of origin, consular invoices, or other documents that may be required for importation; and

3 Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery specified in the contract.

(End of clause)

52.247-40 Ex Dock, Pier, or Warehouse, Port of Importation.

As prescribed in 47.303–12(c), insert the following clause in solicitations and contracts when the delivery term is ex dock, pier, or warehouse, port of importation:

EX DOCK, PIER, OR WAREHOUSE, PORT OF IMPORTATION (APR 1984)

(a) The term ex dock, pier, or warehouse, port of importation, as used in this clause, means free of expense to the Government delivered on board the ocean vessel to the specified point of destination, with the cost of transportation paid by the Contractor.

(b) The Contractor shall—

1(i) Pack and mark the shipment to comply with contract specifications; or

1(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements;

2(i) Deliver the shipment in good order and condition; and

2(ii) Pay and bear all applicable charges to the point of destination specified in the contract, including transportation costs and export taxes or other fees or charges levied because of exportation;

3 Obtain and dispatch promptly to the Government clean on-board ocean bills of lading to the specified point of destination;

4 Be responsible for any loss of and/or damage to the goods occurring before delivery; and

5 At the Government’s request and expense, provide certificates of origin, consular invoices, or any other documents issued in the country of origin or of shipment, or both, that may be required for importation into the country of destination.

(End of clause)

52.247-41 C.& f. Destination.

As prescribed in 47.303–13(c), insert the following clause in solicitations and contracts when the delivery term is c.& f. destination:

C.& F. DESTINATION (APR 1984)

(a) The term c.& f. destination, as used in this clause, means free of expense to the Government delivered on board the ocean vessel to the specified point of destination, with the cost of transportation paid by the Contractor.

(b) The Contractor shall—

1(i) Pack and mark the shipment to comply with contract specifications; or

1(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements; and

2(i) Deliver the shipment in good order and condition; and

2(ii) Pay and bear all applicable charges to the point of destination specified in the contract, including transportation costs and export taxes or other fees or charges levied because of exportation;

3 Obtain and dispatch promptly to the Government clean on-board ocean bills of lading to the specified point of destination;

4 Be responsible for any loss of and/or damage to the goods occurring before delivery; and

5 At the Government’s request and expense, provide certificates of origin, consular invoices, or any other documents issued in the country of origin or of shipment, or both, that may be required for importation into the country of destination.

(End of clause)
52.247–42 C.i.f. Destination.

As prescribed in 47.303–14(c), insert the following clause in solicitations and contracts when the delivery term is c.i.f. destination:

C.I.F. DESTINATION (APR 1984)

(a) The term c.i.f. destination, as used in this clause, means free of expense to the Government delivered on board the ocean vessel to the specified point of destination, with the cost of transportation and marine insurance paid by the Contractor.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Deliver the shipment in good order and condition into the conveyance of the carrier, or to the custody of the carrier (if only the carrier performs the loading), at the point of delivery and on the date or within the period specified in the contract; and

(ii) Pay and bear all applicable charges up to this point;

(3) Provide a clean bill of lading and/or air waybill;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the goods to the point specified in the contract;

(5) At the Government’s request and expense, assist in obtaining the documents required for the purpose of exportation.

(End of clause)

52.247–43 F.o.b. Designated Air Carrier’s Terminal, Point of Importation.

As prescribed in 47.303–15(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. designated air carrier’s terminal, point of importation:

F.O.B. DESIGNATED AIR CARRIER’S TERMINAL, POINT OF IMPORTATION (APR 1984)

(a) The term f.o.b. designated air carrier’s terminal, point of importation, as used in this clause, means free of expense to the Government loaded aboard the aircraft, or delivered to the custody of the air carrier (if only the air carrier performs the loading), at the air carrier’s terminal specified in the contract.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for air transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Deliver the shipment in good order and condition into the conveyance of the carrier, or to the custody of the carrier (if only the carrier performs the loading), at the point of delivery and on the date or within the period specified in the contract; and

(ii) Pay and bear all applicable charges up to this point;

(3) Provide a clean bill of lading and/or air waybill;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the goods to the point specified in the contract;

(5) At the Government’s request and expense, assist in obtaining the documents required for the purpose of exportation.

(End of clause)

52.247–44 F.o.b. Designated Air Carrier’s Terminal, Point of Exportation.

As prescribed in 47.303–16(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. designated air carrier’s terminal, point of exportation:

F.O.B. DESIGNATED AIR CARRIER’S TERMINAL, POINT OF EXPORTATION (APR 1984)

(a) The term f.o.b. designated air carrier’s terminal, point of exportation, as used in this clause, means free of expense to the Government delivered to the air carrier’s terminal at the point of importation specified in the contract.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for air transportation in conformance with carrier requirements to protect the goods;

(2) Prepare and distribute bills of lading or air waybills;

(3)(i) Deliver the shipment in good order and condition to the point of delivery specified in the contract; and
Federal Acquisition Regulation

52.247-48 F.o.b. Destination—Evidence of Shipment.

As prescribed in 47.305-4(c), insert the following clause:

F.O.B. DESTINATION—EVIDENCE OF SHIPMENT (FEB 1999)

(a) If this contract is awarded on a free on board (f.o.b.) destination basis, the Contractor—

(1) Shall not submit an invoice for payment until the supplies covered by the invoice have been shipped to the destination; and

(2) Shall retain, and make available to the Government for review as necessary, the following evidence of shipment documentation for a period of 3 years after final payment under the contract.

(c) If the offeror uses a shipping point other than that which has been used by the Government as a basis for the evaluation of offers, any increase of transportation costs shall be borne by the Contractor and any savings shall revert to the Government.

(End of provision)


As prescribed in 47.305-3(f)(2), insert the following provision when it is appropriate to use methods other than land transportation in evaluating offers; e.g., air, pipeline, barge, or ocean tanker, modify the provision accordingly.

EVALUATION—F.O.B. ORIGIN (JUN 2003)

(a) The Government normally uses land methods of transportation by regulated common carrier for shipment within the contiguous United States.

(b) To evaluate offers, the Government will consider only these methods to establish the cost of transportation between offeror’s shipping point and destination (tentative or firm, whichever is applicable) in the contiguous United States.

(c) This transportation cost will be added to the offer price to determine the Government’s overall cost.

(d) When tentative destinations are indicated, the Government will use them only for evaluation purposes. The Government has the right to use any other means of transportation or any other destination at the time of shipment.

(End of provision)

[68 FR 28088, May 22, 2003]
52.247–49 Destination Unknown.

As prescribed in 47.305–5(b)(2), insert the following provision in solicitations when destinations are tentative and only for the purpose of evaluating offers:

DESTINATION UNKNOWN (APR 1984)

For the purpose of evaluating offers and for no other purpose, the final destination(s) for the supplies will be considered to be as follows:

(End of provision)

52.247–50 No Evaluation of Transportation Costs.

As prescribed in 47.305–5(c)(1), insert the following provision in solicitations when exact destinations are not known and it is impractical to establish tentative or general delivery places for the purpose of evaluating transportation costs:

NO EVALUATION OF TRANSPORTATION COSTS

(End of provision)

52.247–51 Evaluation of Export Offers.

As prescribed in 47.305–6(e), insert the following provision:

EVALUATION OF EXPORT OFFERS (JAN 2001)

(a) Port handling and ocean charges—other than DOD water terminals. Port handling and ocean charges in tariffs on file with the Bureau of Domestic Regulation, Federal Maritime Commission, or other appropriate regulatory authorities as of the date of bid opening (or the closing date specified for receipt of offers) and which will be effective for the date of the expected initial shipment will be used in the evaluation of offers.

(b) F.o.b. origin, transportation under Government bill of lading. (1) Offers shall be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Included in this evaluation, in addition to the f.o.b. origin price of the item, shall be the inland transportation costs from the point of origin in the United States to the port of loading, port handling charges at the port of loading, and ocean shipping costs from the United States port of loading (see paragraph (d) below) to the overseas port of discharge. The Government may designate the mode of routing of shipment and may load from other than those ports specified for evaluation purposes.

(2) Offers shall be evaluated on the basis of shipment through one of the ports set forth in paragraph (d) below to the overseas port of discharge. Evaluation shall be made on the basis of shipment through the port that will result in the lowest cost to the Government.

(3) Ports of loading shall be considered as destinations within the meaning of the term f.o.b. destination as that term is used in the F.o.b. Origin clause of this contract.

(c) F.o.b. port of loading with inspection and acceptance at origin. (1) Offers shall be evaluated on the basis of the lowest laid down cost to the Government at the overseas port of discharge via methods compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Included in this evaluation, in addition to the price to the United States port of loading (see paragraph (2) below), shall be the port handling charges at the port of loading and the ocean shipping cost from the port of loading (see paragraph (d) below) to the overseas port of discharge.

(2) Unless offers are applicable only to f.o.b. origin delivery under Government bills of lading (see paragraph (b) above), offerors shall designate below at least one of the ports of loading listed in paragraph (d) below as their place of delivery. Failure to designate at least one of the ports as the point to which delivery will be made by the Contractor may render the offer nonresponsive.

PLACE OF DELIVERY:

[Offerors insert at least one of the ports listed in paragraph (d) below.]

(d) Ports of loading for evaluation of offers. Terminals to be used by the Government in...
Federal Acquisition Regulation

52.247-51

Evaluating offers are as follows: (For the information of the offerors, ocean and port handling charges are set forth if the terminal named is a DOD water terminal.)

<table>
<thead>
<tr>
<th>Ports/Terminals of Loading</th>
<th>Combined Ocean and Port Handling Charges to (Indicate Country)</th>
<th>Unit of Measure: i.e., metric ton, measurement ton, cubic foot, etc.</th>
</tr>
</thead>
</table>

(a) Ports of loading nominated by offeror. The ports of loading named in paragraph (d) above are considered by the Government to be appropriate for this solicitation due to their compatibility with methods and facilities required to handle the cargo and types of vessels and to meet the required overseas delivery dates. Notwithstanding the foregoing, offerors may nominate additional ports of loading that the offeror considers to be more favorable to the Government. The Government may disregard such nominated ports if, after considering the quantity and nature of the supplies concerned, the requisite cargo handling capability, the available sailings on U.S.-flag vessels, and other pertinent transportation factors, it determines that use of the nominated ports is not compatible with the required overseas delivery date. United States Great Lakes ports of loading may be considered in the evaluation of offers only for those items scheduled in this provision for delivery during the ice-free or navigable period as proclaimed by the authorities of the St. Lawrence Seaway (normal period is between April 15 and November 30 annually). All ports named, including those nominated by offerors and determined to be eligible as provided in this provision, shall be considered in evaluating all offers received in order to establish the lowest laid down cost to the Government at the overseas port of discharge. All determinations shall be based on availability of ocean services by U.S.-flag vessels only. Additional U.S. port(s) of loading nominated by offeror, if any:

(f) Price basis: Offeror shall indicate whether prices are based on—

☐ Paragraph (b), f.o.b. origin, transportation by GBL to port listed in paragraph (d);
☐ Paragraph (c), f.o.b. destination (i.e., a port listed in paragraph (d));
☐ Paragraph (e), f.o.b. origin, transportation by GBL to port nominated in paragraph (e); and/or
☐ Paragraph (e), f.o.b. destination (i.e., a port nominated in paragraph (e)).

(End of provision)

Alternate I (FEB 2006). When the CONUS ports of export are DOD water terminals, delete paragraph (a) from the basic provision and substitute for it the following paragraph (a):

(a) Port handling and ocean charges—DOD water terminals. The port handling and ocean charges are set forth in paragraph (d) of this provision for the information of offerors and are current as of the time of issuance of the solicitation. For evaluation of offers, the Government will use the port handling and ocean charges made available by the Directorate of International Traffic, Military Surface Deployment and Distribution Command (SDDC) rate information letters, on file as of the date of bid opening (or the closing date specified for receipt of offers) and which will be effective for the date of the expected initial shipment.

Alternate II (APR 1984). When offers are solicited on an f.o.b. origin only basis, delete paragraphs (c) and (f) from the basic provision, but do not redesignate the ensuing paragraphs. Add the following basic paragraph (g) to the provision:

(g) Paragraphs (c) and (f) have been deleted but ensuing paragraphs have not been redesignated.

Alternate III (APR 1984). When offers are solicited on an f.o.b. destination only basis, delete paragraph (b) from the basic provision but do not redesignate the ensuing paragraphs. Delete subparagraph (c)(2) and paragraph (f) from the provision and substitute the following subparagraph (c)(2) and paragraph (f). Add paragraph (g) below:

(c)(2) Offerors shall designate below at least one of the ports of loading listed in paragraph (d) below as their place of delivery. Failure to designate at least one of the ports as the point to which delivery will be made by the Contractor may render the offer nonresponsive.

PLACE OF DELIVERY:

[Offerors insert at least one of the ports listed in paragraph (d) below].

(f) Price basis. Offerors shall indicate whether prices are based on—

☐ Paragraph (c), f.o.b. destination (i.e., a port listed in paragraph (d)); or
☐ Paragraph (e), f.o.b. destination (i.e., a port nominated in paragraph (e)).

(g) Paragraph (b) has been deleted, but ensuing paragraphs have not been redesignated.

52.247–52 Clearance and Documentation Requirements—Shipments to DOD Air or Water Terminal Transshipment Points.

As prescribed in 47.305–6(f)(2), insert the following clause in solicitations and contracts when shipments will be consigned to DOD air or water terminal transshipment points:

CLEARANCE AND DOCUMENTATION REQUIREMENTS—SHIPMENTS TO DOD AIR OR WATER TERMINAL TRANSSHIPMENT POINTS (FEB 2006)

All shipments to water or air ports for transshipment to overseas destinations are subject to the following requirements unless clearance and documentation requirements have been expressly delegated to the Contractor:

(a) At least 10 days before shipping cargo to a water port, the Contractor shall obtain an Export Release from the Government transportation office for—

(1) Each shipment weighing 10,000 pounds or more; and
(2) Each shipment weighing less than 10,000 pounds; if the cargo either—
   (i) Is classified TOP SECRET, SECRET, OR CONFIDENTIAL;
   (ii) Will require exclusive use of a motor vehicle;
   (iii) Will occupy full visible capacity of a railway car or motor vehicle;
   (iv) Is less than a carload or truckload, but will be tendered as a carload or truckload; or
   (v) Is to be shipped to an ammunition outloading port for water shipment; or
(3) Each shipment weighing less than 10,000 pounds if the cargo consists of—
   (i) Navajo;
   (ii) Perishable biological material;
   (iii) Vehicles to be offered for driveaway service;
   (iv) Explosives, ammunition, poisons or other dangerous articles classified as class 1, division 1.1, 1.2, 1.3, 1.4; class 2, division 2.3; and class 6, division 6.1; or
   (v) Radioactive material, as defined in 49 CFR 173.403, class 7.

(b) The Contractor is cautioned not to order railway cars or motor vehicles for loading until an Export Release has been received.

c) If the Contracting Officer directs delivery within a shorter period than 10 days, the Contractor shall advise the transportation office of the date on which the cargo will be ready for shipment.

d) At least 5 days before shipping cargo to either a water port or an air port (regardless of the weight, security classification, or the commodity description), the Contractor shall provide the Government transportation office the information shown in paragraph (e) below to permit preparation of a Transportation Control and Movement Document (TCMD).

e) When applying for the Export Release in paragraph (a) above or when providing information for preparation of the TCMD in accordance with paragraph (d) above, the Contractor shall furnish the—

(1) Proposed date or dates of shipment;
(2) Number and type of containers;
(3) Gross weight and cube of the shipment;
(4) Number of cars or trucks that will be involved;
(5) Transportation Control Number(s) (TCN) as required for marking under MIL-STD-129 or Federal Standard 123; and
(6) Proper shipping name as specified in 49 CFR 146.05 for all items classified as dangerous substances as required for marking under MIL-STD-129.

f) All movement documents (Government or commercial bills of lading or other delivery documents) shall be annotated by the Contractor with the—

(1) Transportation Control Number, Consignor Code of activity directing the shipment; i.e., cognizant contract administration office, purchasing office when contract administration has been retained, or a Contractor specifically delegated transportation responsibilities under DoD 4500.9–R, Defense Transportation Regulation, responsibilities under DoD 4500.9–R, Defense Transportation Regulation, responsibilities in the contract, whichever is appropriate, Consignee Code, and Transportation Priority for each shipment unit;
(2) Export Release Number and valid shipping period, if stated (if expired, the Contractor shall request a renewal); and
(3) Cubic foot measurement of each shipment unit.

g) All annotations on the movement documents shall be made in the Description of Articles space except, on Government bills of lading the Export Release number and shipping period shall be entered in the space entitled Route Order/Release No.

(h) The Contractor shall (1) mail a copy of the bill of lading or other movement document to the transshipment point and (2) give a copy of the bill of lading or other movement document to the carrier for presentation to the transshipment point with delivery of the shipment.

(End of clause)
Federal Acquisition Regulation


As prescribed in 47.305–12(a)(2), insert the following clause:

F.O.B. POINT FOR DELIVERY OF GOVERNMENT-FURNISHED PROPERTY (JUN 2003)

(a) Unless otherwise specified in this solicitation, the Government will deliver any Government-furnished property for use within the contiguous United States or Canada to a point specified by the Contractor in the offer. If the Government makes delivery by railroad, the f.o.b. point will be private siding, Contractor’s plant. If the Contractor’s plant is not served by rail, the f.o.b. point will be railroad cars in the same or nearest city having rail service. The Government may choose the mode of transportation and the carriers and will bear the cost of all line-haul transportation to the specified destination.

(b) If the destination of the Government-furnished property is a Contractor’s plant located outside the contiguous United States or Canada, the f.o.b. point for Government delivery of Government-furnished property will be a Contractor-specified location in the contiguous United States. If the Contractor fails to name a point, the Government will select as the f.o.b. point the port city in the contiguous United States nearest to the Government-furnished property that has regular commercial water transportation services to the offshore port nearest the Contractor’s plant.

(c) Unless otherwise directed by the Contracting Officer or provided in the contract, the Contractor shall return all Government-furnished equipment, supplies, and property, including all property not returned in the form of acceptable end items, to the point at which the Government property was originally furnished to the Contractor under the contract. Notwithstanding the fact that the Government may have furnished the property at the Contractor’s plant, the Contracting Officer may direct the Contractor to deliver the Government property being returned to, and load, block, and brace it in, railway cars in the city in which the Contractor’s plant is located, or, if the Contractor’s city is not served by rail service, in the nearest city having rail service. Unless otherwise specified in the contract, all property shall be packed in containers conforming with the rules of common carrier published tariffs so as to be free of penalty charges by the carrier designated for shipment by the Government.

52.247–56 Transit Arrangements.

As prescribed in 47.305–13(a)(3)(ii), insert the following provision in solicitations when benefits may accrue to the Government because transit arrangements may apply:

TRANSIT ARRANGEMENTS (APR 1984)

The lowest appropriate common carrier transportation costs, including offeror’s through transit rates and charges when applicable, from offeror’s shipping points, via the transit point, to the ultimate destination will be used in evaluating offers.

<table>
<thead>
<tr>
<th>Transit point(s)</th>
<th>Destination(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
|                  |                | (End of clause)
52.247–57 Transportation Transit Privilege Credits.

As prescribed in 47.305–13(b)(4), insert the following clause in solicitations and contracts when supplies are of such a nature, or when it is the custom of the trade, that offerors may have potential transit credits available and the Government may reduce transportation costs through the use of transit credits:

**TRANSPORTATION TRANSIT PRIVILEGE CREDITS (APR 1984)**

(a) If the offeror has established with regulated common carriers transit privileges that can be applied to the supplies when shipped from the original source, the offeror is invited to propose to use these credits for shipping the supplies to the designated Government destinations. The offeror will ship these supplies under commercial bills of lading, paying all remaining transportation charges connected with the shipment, subject to reimbursement by the Government in an amount equal to the remaining charges but not exceeding the amount quoted by the offeror.

(b) After loading on the carrier’s equipment and acceptance by the carrier, these shipments under paid commercial bills of lading will move for the account of and at the risk of the Government (unless, pursuant to the Changes clause, the office administering the contract directs use of Government bills of lading).

(c) The amount quoted below by the offeror represents the transportation costs in cents per 100 pounds (freight rate) for full carload/truckload shipments of the supplies from offeror’s original source, via offeror’s transit plant or point, to the Government destination(s) including the carrier’s transit privilege charge, less the applicable transit credit (i.e., the amount (rate) initially paid to the carrier for shipment from original source to offeror’s transit plant or point).

(d) The rate per CWT quoted will be used by the Government to evaluate the offered f.o.b. origin price unless a lower rate is applicable on the date of bid opening (or closing date specified for receipt of offers). To have the offer evaluated on this basis, the offeror must insert below the remaining transportation charges that the offeror agrees to pay, including any transit charges, subject to reimbursement by the Government, as explained in this clause, to destinations listed in the Schedule as follows:

<table>
<thead>
<tr>
<th>RATE PER CWT IN CENTS</th>
<th>TO DESTINATION</th>
</tr>
</thead>
</table>

52.247–58 Loading, Blocking, and Bracing of Freight Car Shipments.

As prescribed in 47.305–15(a)(2), insert the following clause in solicitations and contracts when supplies may be shipped in carload lots by rail:

**LOADING, BLOCKING, AND BRACING OF FREIGHT CAR SHIPMENTS (APR 1984)**

(a) Upon receipt of shipping instructions, as provided in this contract, the supplies to be included in any carload shipment by rail shall be loaded, blocked, and braced by the Contractor in accordance with the standards published by the Association of American Railroads and effective at the time of shipment.

(b) Shipments, for which the Association of American Railroads has published no such standards, shall be loaded, blocked, and braced in accordance with standards established by the shipper as evidenced by written acceptance of an authorized representative of the carrier.

(c) The Contractor shall be liable for payment of any damage to any supplies caused by the failure to load, block, and brace in accordance with acceptable standards set forth herein.

(d) A copy of the appropriate pamphlet of the Association of American Railroads may be obtained from that Association.


As prescribed in 47.305–16(a), insert the following clause in solicitations and contracts when it is contemplated that they may result in f.o.b. origin contracts with shipments in carloads or truckloads. This will facilitate realistic freight cost evaluations of offers and ensure that contractors produce economical shipments of agreed size.

**F.O.B. ORIGIN—CARLOAD AND TRUCKLOAD SHIPMENTS (APR 1984)**

(a) The Contractor agrees that shipment shall be made in carload or truckload lots when the quantity to be delivered to any one destination in any delivery period pursuant to the contract schedule of deliveries is sufficient to constitute a carload or truckload shipment, except as may otherwise be permitted or directed, in writing, by the Contracting Officer.

(b) For evaluation purposes, the agreed weight of a carload or truckload shall be the highest applicable minimum weight that will result in the lowest freight rate (or per car
Federal Acquisition Regulation

52.247–60 Guaranteed Shipping Characteristics.

As prescribed in 47.305–16(b)(1), insert the following clause:

GUARANTEED SHIPPING CHARACTERISTICS

(DEC 1989)

(a) The offeror is requested to complete subparagraph (a)(1) of this clause, for each part or component which is packed or packaged separately. This information will be used to determine transportation costs for evaluation purposes. If the offeror does not furnish sufficient data in subparagraph (a)(1) of this clause, to permit determination by the Government of the item shipping costs, evaluation will be based on the shipping characteristics submitted by the offeror whose offer produces the highest transportation costs or in the absence thereof, by the Contracting Officer’s best estimate of the actual transportation costs. If the item shipping costs, based on the actual shipping characteristics, exceed the item shipping costs used for evaluation purposes, the Contractor agrees that the contract price shall be reduced by an amount equal to the difference between the transportation costs actually incurred, and the costs which would have been incurred if the evaluated shipping characteristics had been accurate.

(1) To be completed by the offeror:

(i) Type of container: Wood Box, Fiber Box, Barrel, Reel, Drum, Other (Specify) .

(ii) Shipping configuration: Knocked-down , Set-up , Nested , Other (specify) .

(iii) Size of container (Length) × (Width) × (Height) = Cubic FT;

(iv) Number of items per container Each;

(v) Gross weight of container and contents LBS

(vi) Palletized/skidded Yes No;

(vii) Number of containers per pallet/skid ;

(viii) Weight of empty pallet bottom/skid and sides LBS;

(ix) Size of pallet/skid and contents LBS Cube ;

(x) Number of containers or pallets/skid per railcar

Type of railcar ;

(xi) Number of containers or pallets/skids per trailer

Size of trailer FT

Type of trailer

(2) To be completed by the Government after evaluation but before contract award:

(i) Rate used in evaluation ;

(ii) Tender/Tariff ;

(iii) Item ;

(b) The guaranteed shipping characteristics requested in subparagraph (a)(1) of this clause do not establish actual transportation requirements, which are specified elsewhere in this solicitation. The guaranteed shipping characteristics will be used only for the purpose of evaluating offers and establishing any liability of the successful offeror for increased transportation costs resulting from actual shipping characteristics which differ from those used for evaluation in accordance with paragraph (a) of this clause.

(End of clause)


As prescribed in 47.305–16(c), insert the following clause in solicitations and contracts when volume rates may apply:

F.O.B. ORIGIN—MINIMUM SIZE OF SHIPMENTS

(APR 1984)

The Contractor agrees that shipment will be made in carload and truckload lots when the quantity to be delivered to any one destination in any delivery period pursuant to the contract schedule of deliveries is sufficient to constitute a carload or truckload shipment, except as may otherwise be permitted or directed in writing by the Contracting Officer. The agreed weight of a carload or truckload will be the highest applicable minimum weight which will result in the lowest freight rate (or per car charge) on file or published in common carrier tariffs or tenders as of the date of bid opening (or the closing date specified for receipt of proposals).

(c) For purposes of actual delivery, the agreed weight of a carload or truckload will be the highest applicable minimum weight that will result in the lowest possible freight rate (or per car charge) on file or published as of date of shipment.

(d) If the total weight of any scheduled quantity to a destination is less than the highest carload/truckload minimum weight used for evaluation of offers, the Contractor agrees to ship such scheduled quantity in one shipment.

(e) The Contractor shall be liable to the Government for any increased costs to the Government resulting from failure to comply with the above requirements.

(End of clause)
tenders as of date of shipment. In the event the total weight of any scheduled quantity to a destination is less than the highest carload/truckload minimum weight, the Contractor agrees to ship such scheduled quantity in one shipment. The Contractor shall be liable to the Government for any increased costs to the Government resulting from failure to comply with the above requirements. This liability shall not attach if supplies are outsized or of such nature that they cannot be loaded at the highest minimum weight bracket.

(End of clause)

52.247–62 Specific Quantities Unknown.

As prescribed in 47.305–16(d)(2), insert the following clause in solicitations and contracts when total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined. This clause protects the interests of both the Government and the contractor during the course of the performance of the contract.

SPECIFIC QUANTITIES UNKNOWN (APR 1984)

(a) For the purpose of evaluating f.o.b. destination offers, the Government estimates that the quantity specified will be shipped to the destinations indicated:

<table>
<thead>
<tr>
<th>Estimated quantity</th>
<th>Destination</th>
</tr>
</thead>
</table>

(b) If the quantity shipped to each destination varies from the quantity estimated, and if the variation results in a change in the transportation costs, appropriate adjustment shall be made.

(End of clause)

52.247–63 Preference for U.S.-Flag Air Carriers.

As prescribed in 47.405, insert the following clause:

PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003)

(a) Definitions. As used in this clause—

International air transportation means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

United States means the 50 States, the District of Columbia, and outlying areas.


(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation):

[State reasons]:

(End of statement)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

(End of clause)


52.247–64 Preference for Privately Owned U.S.-Flag Commercial Vessels.

As prescribed in 47.507(a), insert the following clause:
Federal Acquisition Regulation

52.247–64

PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006)

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—

(1) Acquired for a U.S. Government agency account;
(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c)(1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Office of Cargo Preference, Maritime Administration (MAR-590), 400 Seventh Street, SW, Washington, DC 20590. Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(A) Sponsoring U.S. Government agency.
(B) Name of vessel.
(C) Vessel flag of registry.
(D) Date of loading.
(E) Port of loading.
(F) Port of final discharge.
(G) Description of commodity.
(H) Gross weight in pounds and cubic feet if available.

(i) Total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to—

(1) Cargoes carried in vessels as required or authorized by law or treaty;
(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2355);
(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
(4) Subcontracts or purchase orders for the acquisition of commercial items unless—

(i) This contract is—

(A) A contract or agreement for ocean transportation services; or
(B) A construction contract;

(ii) The supplies being transported are—

(A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or
(B) Shipped in direct support of U.S. military—

(I) Contingency operations;
(II) Exercises; or
(III) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Office of Costs and Rates, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590. Phone: 202–366–4610.

(End of clause)

Alternate I (APR 2003). As prescribed in 47.507(a)(2), substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) Except as provided in paragraphs (b) and (e) of this clause, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

(b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Contractor shall notify the Contracting Officer and request (1) authorization to ship in foreign-flag vessels...
or (2) designation of available U.S.-flag vessels. If the Contractor is authorized in writing by the Contracting Officer to ship the supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.

Alternate II (FEB 2006). As prescribed in 47.507(a)(3), substitute the following paragraph (e) for paragraph (e) of the basic clause:

(e) The requirement in paragraph (a) does not apply to—
(1) Cargoes carried in vessels as required or authorized by law or treaty;
(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and
(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(4) Subcontracts or purchase orders under this contract for the acquisition of commercial items unless the supplies being transported are—
(i) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or
(ii) Shipments in direct support of U.S. military—
(A) Contingency operations;
(B) Exercises; or
(C) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations. (Note: This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.)


As prescribed in 47.305–17(f), insert the following clause:

**F.O.B. ORIGIN PREPAID FREIGHT—SMALL PACKAGE SHIPMENTS (JAN 1991)**

(a) When authorized by the Contracting Officer, f.o.b. origin freight shipments which do not have a security classification shall move on prepaid commercial bills of lading or other shipping documents to domestic destinations, including air and water terminals. Weight of individual shipments shall be governed by carrier restrictions but shall not exceed 150 pounds by any form of commercial air or 1,000 pounds by other commercial carriers. The Government will reimburse the Contractor for reasonable freight charges.

(b) The Contractor shall annotate the commercial bill of lading as required by the clause of this contract entitled “Commercial Bill of Lading Notations.”

(c) The Contractor shall consolidate prepaid shipments in accordance with procedures established by the cognizant transportation office. The Contractor is authorized to combine Government prepaid shipments with the Contractor’s commercial shipments for delivery to one or more consignees and the Government will reimburse its pro rata share of the total freight costs. The Contractor shall provide a copy of the commercial bill of lading promptly to each consignee. Quantities shall not be divided into mailable lots for the purpose of avoiding movement by other modes of transportation.

(d) Transportation charges will be billed as a separate item on the invoice for each shipment made. A copy of the pertinent bill of lading, shipment receipt, or freight bill shall accompany the invoice unless otherwise specified in the contract.

(e) Loss and damage claims will be processed by the Government.

(End of clause)

[55 FR 52800, Dec. 21, 1990]

52.247–66 Returnable Cylinders.  

As prescribed in 47.305–17, insert the following clause:

**RETURNABLE CYLINDERS (MAY 1994)**

(a) Cylinder, referred to in this clause, is a pressure vessel designed for pressures higher than 40 psia and having a circular cross section excluding a portable tank, multitank car tank, cargo tank or tank car.

(b) Returnable cylinders shall remain the Contractor’s property but shall be loaned without charge to the Government for a period of ____ days (Contracting Officer shall insert number of days) (hereafter referred to as loan period) following the day of delivery to the f.o.b. point specified in the contract. Any cylinder not returned within the loan period shall be charged a daily rental beginning with the first day after the loan period expires, to and including the day the cylinders are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or made available for delivery to the
Federal Acquisition Regulation

Contractor’s designated carrier (if the original delivery was f.o.b. destination). The Government shall pay the Contractor a rental of $____ per cylinder, per day, computed separately for cylinders by type, size, and capacity and for each point of delivery named in the contract. No rental shall accrue to the Contractor in excess of replacement value per cylinder specified in paragraph (c) of this clause.

(c) For each cylinder lost or damaged beyond repair while in the Government’s possession, the Government shall pay to the Contractor the replacement value, less the allocable rental paid for that cylinder as follows:

[(Contracting Officer shall insert the cylinder types, sizes, capacities, and associated replacement values.)] These cylinders shall become Government property.

(d) If any lost cylinder is located within 38 calendar days after insert number of days and associated replacement values.

[(Contracting Officer shall insert the number of days)] per cylinder, per day, computed separately for cylinders by type, size, and capacity and for each point of delivery named in the contract. No rental shall accrue to the Contractor in excess of replacement value per cylinder specified in paragraph (c) of this clause.

(End of clause)

[59 FR 11386, Mar. 10, 1994]

52.247-67 Submission of Transportation Documents for Audit.

As prescribed in 47.103-2, insert the following clause:

SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT (FEB 2006)

(a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid—

(1) By the Contractor under a cost-reimbursement contract; and

(2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding $100. Bills under $100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(c) Contractors shall submit the above referenced transportation documents to—

[To be filled in by Contracting Officer]

(End of clause)

[71 FR 208, Jan. 3, 2006]

52.247-68 Report of Shipment (REPSHIP).

As prescribed in 47.208-2, insert the following clause:

REPORT OF SHIPMENT (REPSHIP) (FEB 2006)

(a) Definition. Domestic destination, as used in this clause, means—

(1) A destination within the contiguous United States; or

(2) If shipment originates in Alaska or Hawaii, a destination in Alaska or Hawaii, respectively.

(b) Unless otherwise directed by the Contracting Officer, the Contractor shall—

(1) Send a prepaid notice of shipment to the consignee transportation officer—

(i) For all shipments of—

(A) Classified material, protected sensitive, and protected controlled material;

(B) Explosives and poisons, class 1, division 1.1, 1.2 and 1.3; class 2, division 2.3 and class 6, division 6.1;

(C) Radioactive materials requiring the use of a III bar label; or

(ii) When a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract, or private) for transportation to a domestic destination (other than a port for export);

(2) Transmits the notice by rapid means to the receiving transportation officer at least 24 hours before the arrival of the shipment; and

(3) Send, to the receiving transportation officer, the bill of lading or letter or other document containing the following information and prominently identified as a “Report of Shipment” or “REPSHIP FOR T.O.”

REPSHIP FOR T.O. 81 JUN 61
TRANSPORTATION OFFICER
DEFENSE DEPOT, MEMPHIS, TN.
SHIPPED YOUR DEPOT 1981 JUN 1 540 CTNS MENS COTTON TROUSERS, 30,240 LB, 1782 CUBE, VIA XX-YY*
IN CAR NO. XX 123456**-BL***-
C9800001****CONTRACT
DLA **ETA****-JUNE 5 JONES & CO., JERSEY CITY, N.J.
*Name of rail carrier, trucker, or other carrier.
**Vehicle identification.
***Bill of lading.

383
48 CFR Ch. 1 (10–1–09 Edition)

52.248–1 Value Engineering.

As prescribed in 48.201, insert the following clause:

VALUE ENGINEERING (FEB 2000)

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP’s) voluntarily. The Contractor shall share in any net acquisition savings realized from accepted VECP’s, in accordance with the incentive sharing rates in paragraph (f) below.

(b) Definitions. Acquisition savings, as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include—

1. Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the Contractor’s allowable development and implementation costs;
2. Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and
3. Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

Instant contract savings means the amount of the decrease in unit cost of performance (without deducting any Contractor’s development or implementation costs) resulting from using the VECP on this, the instant contract. If this is a service contract, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

Negative instant contract savings means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor’s allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

Net acquisition savings means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

Sharing base, as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.
Federal Acquisition Regulation 52.248-1

Sharing period, as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.

Unit, as used in this clause, means the item or task to which the Contracting Officer and the Contractor agree the VECP applies.

Value engineering change proposal (VECP) means a proposal that—

(1) Requires a change to this, the instant contract, to implement; and
(2) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; provided, that it does not involve a change—

(1) In deliverable end item quantities only;
(2) In research and development (R&D) end items or R&D test quantities that is due solely to results of previous testing under this contract; or
(3) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (8) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item’s function or characteristics are being altered, the effect of the change on the end item’s performance, and any pertinent objective test data.
(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
(3) Identification of the unit to which the VECP applies.
(4) A separate, detailed cost estimate for—
(1) The affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor’s allowable development and implementation costs, including any amount attributable to subcontracts under the Subcontracts paragraph of this clause, below.
(5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.
(6) A prediction of any effects the proposed change would have on collateral costs to the agency.
(7) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.
(8) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP’s to the Contracting Officer, unless this contract states otherwise. If this contract is administered by another than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the Contracting Officer and to the Administrative Contracting Officer.

(e) Government action. (1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP’s expeditiously; however, it will not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer’s award of a modification to this contract citing this clause and made either before or within a reasonable time after contract performance is completed. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) Sharing rates. If a VECP is accepted, the Contractor shall share in net acquisition savings according to the percentages shown in the table below. The percentage paid the Contractor depends upon (1) this contract’s type (fixed-price, incentive, or cost-reimbursement), (2) the sharing arrangement specified in paragraph (a) above (incentive, program requirement, or a combination as delineated in the Schedule), and (3) the source of the savings (the instant contract, or concurrent and future contracts), as follows:

Sharing period, as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.
(g) Calculating net acquisition savings. (1) Acquisi-
tion savings are realized when (i) the cost or price is reduced on the instant contract, (ii) reductions are negotiated in con-
current contracts, (iii) future contracts are awarded, or (iv) agreement is reached on a lump-sum payment for future contract sav-
ings (see subparagraph (i)(4) below). Net ac-
cquisition savings are first realized, and the Contractor shall be paid a share, when Gov-
ernment costs and any negative instant con-
tract savings have been fully offset against acquisition savings.

(2) Except in incentive contracts, Govern-
ment costs and any price or cost increases resulting from negative instant contract sav-
ings shall be offset against acquisition sav-
ings each time such savings are realized until they are fully offset. Then, the Con-
tractor's share is calculated by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) above). Additional Contractor shares of net acquisition savings shall be paid to the Contractor at the time realized.

(3) If this is an incentive contract, recov-
ery of Government costs on the instant con-
tract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share through the contract incentive structure in savings on the instant contract items affected. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future contract savings.

(4) If the Government does not receive and accept all items on which it paid the Con-
tactor's share, the Contractor shall reim-
burse the Government for the proportionate share of these payments.

(h) Contract adjustment. The modification accepting the VECP (or a subsequent modi-
fication issued as soon as possible after any negotiations are completed) shall—

(1) Reduce the contract price or estimated cost by the amount of instant contract sav-
ings, unless this is an incentive contract;

(2) When the amount of instant contract savings is negative, increase the contract price, target price and ceiling price, target cost, or estimated cost by that amount;

(3) Specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;

(4) Specify the amount of any Government costs or negative instant contract savings to be offset in determining net acquisition savings realized from concurrent or future con-
tract savings; and

(5) Provide the Contractor's share of any net acquisition savings under the instant con-
tract in accordance with the following:

(i) Fixed-price contracts—add to contract price.

(ii) Cost-reimbursement contracts—add to contract fee.

(i) Concurrent and future contract savings. (1) Payments of the Contractor’s share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with subparagraph (h)(3) above. For incentive contracts, shares shall be added as a separate firm-fixed-price line item on the instant contract. The Con-
tactor shall maintain records adequate to identify the first delivered unit for 3 years after final payment under this contract.

(2) The Contracting Officer shall calculate the Contractor’s share of concurrent contract savings by (i) subtracting from the re-
duction in price negotiated on the concur-
rent contract any Government costs or nega-
tive instant contract savings not yet offset and (ii) multiplying the result by the Con-
tactor’s sharing rate.

(3) The Contracting Officer shall calculate the Contractor’s share of future contract savings by (i) multiplying the future unit cost reduction by the number of future con-
tract units scheduled for delivery during the

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### CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS

<table>
<thead>
<tr>
<th>Contract type</th>
<th>Sharing arrangement</th>
</tr>
</thead>
</table>
|                                      | Incentive (voluntary) | Program requirement (manda-
|                                      | Instant contract rate | tory) Con-current and future contract rate |
| Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts) | \(^1\)50 | \(^2\)50 |
| Incentive (fixed-price or cost) (other than award fee) | \(^1\)50 | \(^2\)50 |
| Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts) | \(^3\)25 | \(^3\)25 |

\(^1\) The Contracting Officer may increase the Contractor’s sharing rate to as high as 75 percent for each VECP.
\(^2\) Same sharing arrangement as the contract’s profit or fee adjustment formula.
\(^3\) The Contracting Officer may increase the Contractor’s sharing rate to as high as 50 percent for each VECP.

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[Figures in Percent]
Federal Acquisition Regulation

52.248-1

sharing period, (ii) subtracting any Government costs or negative instant contract savings not yet offset, and (iii) multiplying the result by the Contractor's sharing rate.

(k) Relationship to other incentives. Only those benefits of an accepted VECP not reimbursable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. However, the targets of such incentives affected by the VECP shall not be adjusted because of VECP acceptance. If this contract specifies targets but provides no incentive to surpass them, the value engineering incentive payments shall apply only to the amount of achievement better than target.

(l) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of $100,000 or more and may include one in subcontracts of lesser value. In calculating any adjustment in this contract's price for instant contract savings (or negative instant contract savings), the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs, and any value engineering incentive payments to a subcontractor, clearly resulting from a VECP accepted by the Government under this contract. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that the payments shall not reduce the Government's share of concurrent or future contract savings or collateral savings.

(m) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering clause of contract _, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereunder grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms unlimited rights and limited rights are defined in part 27 of the Federal Acquisition Regulation.)

(End of clause)

Alternate I (APR 1984). If the contracting officer selects a mandatory value engineering program requirement, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) General. The Contractor shall (1) engage in a value engineering program, and submit value engineering progress reports, as specified in the Schedule; and (2) submit to the Contracting Officer any resulting value engineering change proposals (VECP's). In addition to being paid as the Schedule specifies for this mandatory program, the Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the program requirement sharing rates in paragraph (f) below.
52.248–2 Value Engineering—Architect-Engineer.

As prescribed in 48.201(f), insert the following clause:

VALUE ENGINEERING—ARCHITECT-ENGINEER
(MAR 1990)

(a) General. The Contractor shall (1) perform value engineering (VE) services and submit progress reports as specified in the Schedule; and (2) submit to the Contracting Officer any resulting value engineering proposals (VEP’s). Value engineering activities shall be performed concurrently with, and without delay to, the schedule set forth in the contract. The services shall include VE evaluation and review and study of design documents immediately following completion of the 35 percent design state or at such stages as the Contracting Officer may direct.

Each separately priced line item for VE services shall define specifically the scope of work to be accomplished and may include VE studies of items other than design documents. The Contractor shall be paid as the contract specifies for this effort, but shall not share in savings which may result from acceptance and use of VEP’s by the Government.

(b) Definitions.

Life cycle cost, as used in this clause, is the sum of all costs over the useful life of a building, system or product. It includes the cost of design, construction, acquisition, operation, maintenance, and salvage (resale) value, if any.

Value engineering, as used in this clause, means an organized effort to analyze the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life cycle cost consistent with required performance, reliability, quality, and safety.

Value engineering proposal, as used in this clause, means, in connection with an A-E contract, a change proposal developed by employees of the Federal Government or contractor value engineering personnel under contract to an agency to provide value engineering services for the contract or program.

(c) Submissions. After award of an architect-engineering contract the contractor shall—

(1) Provide the Government with a fee breakdown schedule for the VE services (such as criteria review, task team review, and bid package review) included in the contract schedule;

(2) Submit, for approval by the Contracting Officer, a list of team members and their respective resumes representing the engineering disciplines required to complete the study effort, and evidence of the team leader’s qualifications and engineering discipline. Subsequent changes or substitutions to the approved VE team shall be submitted in writing to the Contracting Officer for approval; and

(3) The team leader shall be responsible for prestudy work assembly and shall edit, reproduce, and sign the final report and each VEP. All VEP’s, even if submitted earlier as an individual submission, shall be contained in the final report.

(d) VEP preparation. As a minimum, the contractor shall include the following information in each VEP:

(1) A description of the difference between the existing the proposed design, the comparative advantage and disadvantages of each, a justification when an item’s function is being altered, the effect of the change on system or facility performance, and any pertinent objective test data.
52.248–3 Value Engineering—Construction.

As prescribed in 48.202, insert the following clause:

VALUE ENGINEERING—CONSTRUCTION (SEP 2006)

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP’s) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP’s, in accordance with paragraph (f) below.

(b) Definitions. Collateral costs, as used in this clause, means those agency costs of operation, maintenance, logistic support, or Government-furnished property.

Collateral savings, as used in this clause, means those measurable net reductions resulting from a VECP in the agency’s overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

Contractor’s development and implementation costs, as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

Government costs, as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

Instant contract savings, as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor’s development and implementation costs, including subcontractors’ development and implementation costs (see paragraph (h) below).

Value engineering change proposal (VECP) means a proposal that—

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change—

(i) In deliverable end item quantities only; or

(ii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (7) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item’s function or characteristics are being altered, and the effect of the change on the end item’s performance.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor’s allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP’s to the Resident Engineer at the worksite, with a copy to the Contracting Officer.
(e) Government action. (1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If, after the instant contract amount has been determined, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP’s expeditiously; however, it will not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer’s award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(i) Sharing—Rates. The Government’s share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (i) 45 percent for fixed-price contracts or (ii) 75 percent for cost-reimbursement contracts.

(ii) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to—

(i) Accept the VECP;

(ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) Provide the Contractor’s share of savings by adding the amount calculated to the contract price or fee.

(g) Collateral savings. If a VECP is accepted, the Contracting Officer will increase the instant contract amount by 20 percent of any projected collateral savings determined to be realized in a typical year of use after substracting any Government costs not previously offset. However, the Contractor’s share of collateral savings will not exceed the contract’s firm-fixed-price or estimated cost, at the time the VECP is accepted, or $100,000, whichever is greater. The Contracting Officer is the sole determiner of the amount of collateral savings.

(h) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of $55,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract’s price under paragraph (f) above, the Contractor’s allowable development and implementation costs shall include any subcontractor’s allowable development and implementation costs clearly resulting from a VECP accepted under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that these payments shall not reduce the Government’s share of the savings resulting from the VECP.

(i) Data. The Contractor may restrict the Government’s right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

“These data, furnished under the Value Engineering—Construction clause of contract ... shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government’s right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.”

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms unlimited rights and limited rights are defined in part 27 of the Federal Acquisition Regulation.)

(End of clause)

Alternate I (APR 1984). When the head of the contracting activity determines that the cost of calculating and tracking collateral savings will exceed the benefits to be derived in a construction contract, delete paragraph (g) from the basic clause and redesignate the remaining paragraphs accordingly.

Federal Acquisition Regulation

Termination for Convenience of the Government (Fixed-Price) (Short Form) (APR 1984)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government’s interest. If this contract is terminated, the rights, duties, and obligations of the parties, including compensation to the Contractor, shall be in accordance with part 49 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

Alternate I (APR 1984). If the contract is for dismantling, demolition, or removal of improvements, designate the basic clause as paragraph (a) and add the following paragraph (b):

(b) Upon receipt of the termination notice, if title to property is vested in the Contractor under this contract, it shall revert in the Government regardless of any other clause of the contract, except for property that the Contractor (a) disposed of by bona fide sale or (b) removed from the site.


52.249–2 Termination for Convenience of the Government (Fixed-Price).

As prescribed in 49.502(b)(1)(i), insert the following clause:

Termination for Convenience of the Government (Fixed-Price) (MAY 2004)

(a) The Government may terminate performance of work under this contract in whole or in part if the Contractor determines that a termination is in the Government’s interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the
list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under §6.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.
(1) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor’s termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor’s costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor’s office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

Alternate I (SEP 1996). If the contract is for construction, substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

Alternate II (SEP 1996). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the Contracting Officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete subparagraph (m)(2) of the basic clause.

Alternate III (SEP 1996). If the contract is for construction and with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, substitute the following paragraph (g) for paragraph (g) of the basic clause. Subparagraph (m)(2) may be deleted from the basic clause if the Contracting Officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any
52.249–3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).

As prescribed in 49.502(b)(2), insert the following clause:

**TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS) (MAY 2004)**

(a) The Government may terminate performance of work under this contract, in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government’s interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date. Upon receipt of the notice, if title to property is vested in the Contractor under this contract, it shall vest in the Government regardless of any other clause of this contract, except for property that the Contractor disposed of by bona fide sale or removed from the site.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of delay in determining or adjusting any amounts due under this clause:

1. Stop work as specified in the notice.
2. Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
3. Terminate all subcontracts to the extent they relate to the work terminated.
4. Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
5. With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
6. As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract has been completed, would be required to be furnished to the Government.
7. Complete performance of the work not terminated.
8. Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
9. Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
(c) The Contractor shall submit complete termination inventory schedules no later
Federal Acquisition Regulation

52.249-3

than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Preservation and protection of property under subparagraph (b)(8) of this clause.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (e) or (l) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (e), (g), or (l) of this clause, the Government shall pay the Contractor the amount determined by the Contracting Officer, if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract, if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under section 49.302 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the amount of the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Preservation and protection of property under subparagraph (b)(8) of this clause.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (i) or paragraph (g) of this clause, exclusive of settlement costs, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(i) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract, if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under section 49.302 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the amount of the settlement to reflect the indicated rate of loss.
52.249-4 Termination for Convenience of the Government (Services) (Short Form)

As prescribed in 49.502(c), insert the following clause in solicitations and contracts for services, regardless of value, when a fixed-price contract is contemplated and the Contracting Officer determines that because of the kind of services required, the successful offeror will not incur substantial charges in preparation for and in carrying out the contract, and would, if terminated for the convenience of the Government, limit termination settlement charges to services rendered before the date of termination:

**TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (SERVICES) (SHORT FORM)**

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Government shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(End of clause)

52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions)

As prescribed in 49.502(d), insert the following clause:

**TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS) (SEP 1996)**

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest.
Federal Acquisition Regulation

Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations:

(1) Stop work as specified in the notice.
(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
(3) Terminate all applicable subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.
(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts, in which case the Government shall have the right to settle or pay any termination settlement proposal arising out of those terminations.
(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; approval or ratification will be final for purposes of this clause.
(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government any information and items that, if the contract had been completed, would have been required to be furnished, including (i) materials or equipment produced, in process, or acquired for the protection and preservation of the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer by, and at prices approved by, the Contractor shall have the right to sell, as directed by the Contracting Officer, under Office of Management and Budget (OMB) Circular A–122, Cost Principles for Nonprofit Organizations, July 8, 1980, those cost principles shall apply; provided, that if the Contractor is not an educational institution, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A–122, the cost principles at FAR 31.2 for commercial organizations shall apply to such contractor.
(7) Complete performance of the work not terminated.
(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, termination inventory other than that retained by the Government under subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly but no later than 1 year from the effective date of termination unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. If the Contractor fails to submit the termination settlement proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(e) Subject to paragraph (d) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Contractor and any reasonable loss on outstanding commitments for personal services that the Contractor is unable to cancel; provided, that the Contractor exercised reasonable diligence in diverting such commitments to other operations. The contract shall be amended and the Contractor paid the agreed amount.

(f) The cost principles and procedures in subpart 31.3 of the Federal Acquisition Regulation (FAR), in effect on the date of the contract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Contractor is not an educational institution, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A–122, Cost Principles for Nonprofit Organizations, July 8, 1980, those cost principles shall apply; provided, that if the Contractor is a nonprofit institution listed in Attachment C of OMB Circular A–122, the cost principles at FAR 31.2 for commercial organizations shall apply to such contractor.

(g) The Government may, under the terms and conditions it prescribes, make partial payments against costs incurred by the Contractor for the terminated portion of this contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(h) The Contractor has the right of appeal as provided under the Disputes clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) of this clause...
and failed to request a time extension, there is no right of appeal.

(End of clause)


52.249–6 Termination (Cost-Reimbursement),

As prescribed in 49.503(a)(1), insert the following clause:

**Termination (Cost-Reimbursement) (MAY 2004)**

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if—

(1) The Contracting Officer determines that a termination is in the Government’s interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. **Default** includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor’s failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(5) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them.
or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor’s termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors’ termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.

(i) The cost principles and procedures in part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (i) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contractor has made a determination of the amount due under paragraph (f), (h) or (i) of this clause, the Government shall pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The
Contracting Officer shall amend the contract to reflect the agreement.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 437g, until 10 days after the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

(End of clause)

Alternate I (SEP 1996). If the contract is for construction, substitute the following subparagraph (h)(4) for subparagraph (h)(4) of the basic clause:

(4) A portion of the fee payable under the contract determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total work in place required by the contract.

Alternate II (SEP 1996). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete subparagraph (m)(2) from the basic clause.

Alternate III (SEP 1996). If the contract is for construction with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, the following subparagraph (h)(4) shall be substituted for subparagraph (h)(4) of the basic clause. Subparagraph (m)(2) may be deleted from the basic clause if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(4) A portion of the fee payable under the contract determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total work in place required by the contract.

Alternate IV (SEP 1996). If the contract is a time-and-material or labor-hour contract, substitute the following paragraphs (h) and (i) for paragraphs (h) and (l) of the basic clause:

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor and shall pay the amount determined as follows:

(i) If the termination is for the convenience of the Government, include—

(i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the contractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these expenses as rapidly as practicable;

(iv) If not included in subdivision (h)(1)(i), (ii), or (iii) above, the cost of settling and paying termination settlement proposals...
 regulates the handling of costs incurred before and after the effective date of termination for fixed-price contracts. The government and contractor must agree on the costs to be paid. If they cannot agree, the contract states the process for resolving disputes. Terminations for default are handled similarly. The regulations ensure that all costs are accounted for, whether the contractor is awarded any equitable adjustments or not.
contracts for architect-engineer services when a fixed-price contract is contemplated:

Termination (Fixed-Price Architect-Engineer) (APR 1984)

(a) The Government may terminate this contract in whole or, from time to time, in part, for the Government's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

(b) If the termination is for the convenience of the Government, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

(c) If the termination is for failure of the Contractor to fulfill the contract obligations, the Government may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Government.

(d) If, after termination for failure to fulfill contract obligations, it is determined that the Contractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(e) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.249–8 Default (Fixed-Price Supply and Service).

As prescribed in 49.504(a)(1), insert the following clause:

Default (Fixed-Price Supply and Service) (APR 1984)

(a)(1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

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

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government’s right to terminate this contract under subdivisions (1)(i) and (1)(ii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. 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 (collectively 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
Federal Acquisition Regulation

52.249-9

Default (Fixed-Price Research and Development).

As prescribed in 49.504(b), insert the following clause:

**DEFAULT (FIXED-PRICE RESEARCH AND DEVELOPMENT) (APR 1984)**

(a)(1) The Government may, subject to paragraphs (c) and (d) below, by written Notice of Default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

(i) Perform the work under the contract within the time specified in this contract or any extension;

(ii) Prosecute the work so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(b) If the Government terminates this contract under subdivisions (1)(ii) and (1)(iii) of this paragraph, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, work similar to the work terminated, and the Contractor will be liable to the Government for any excess costs for the similar work. 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 or other performance requirements.

(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 or partially completed work not previously delivered to, and accepted by, the Government and (2) other property, including contract rights, 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 the contract price, if separately stated, for completed work it has accepted and the amount agreed upon by the Contractor and the Contracting Officer for (1) completed work for which no separate price is stated, (2) partially completed work, (3) other property described above that it accepts, and (4) 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 from 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)

52.249-10 Default (Fixed-Price Construction).

As prescribed in 49.504(1), insert the following clause:

DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor’s refusal or failure to complete the work within the specified time, whether or not the Contractor’s right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor’s right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor’s right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) 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)

Alternate I (APR 1984). If the contract is for dismantling, demolition, or removal of improvements, substitute the following paragraph (a) for paragraph (a) of the basic clause:

Federal Acquisition Regulation

(a)(1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it shall revert in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(b)(1) The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor’s refusal or failure to complete the work within the specified time, whether or not the Contractor’s right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

Alternate II (APR 1984). If the contract is to be awarded during a period of national emergency, subparagraph (b)(1) below may be substituted for subparagraph (b)(1) of the basic clause:

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

Alternate III (APR 1984). If the contract is for dismantling, demolition, or removal of improvements and is to be awarded during a period of national emergency, substitute the following paragraph (a) for paragraph (a) of the basic clause. The following subparagraph (b)(1) may be substituted for subparagraph (b)(1) of the basic clause:

(a)(1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it shall revert in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(b)(1) The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor’s refusal or failure to complete the work within the specified time, whether or not the Contractor’s right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor’s right to proceed shall not be terminated nor the Contractor charged with damages under this this clause, if—

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and


52.249-11 [Reserved]

52.249-12 Termination (Personal Services).

As prescribed in 49.505(a), insert the following clause in solicitations and contracts for personal services (see part 37):
52.249–13 Termination (Personal Services) (APR 1984)

The Government may terminate this contract at any time upon at least 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

(End of clause)


52.249–13 [Reserved]

52.249–14 Excusable Delays.

As prescribed in 49.505(b), insert the following clause in solicitations and contracts for supplies, services, construction, and research and development on a fee basis whenever a cost-reimbursement contract is contemplated. Also insert the clause in time-and-material contracts, and labor-hour contracts. When used in construction contracts, substitute the words “completion time” for “delivery schedule” in the last sentence of the clause.

EXCUSABLE DELAYS (APR 1984)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (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.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless—

1. The subcontracted supplies or services were obtainable from other sources;
2. The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and
3. The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

(End of clause)


52.250–1 Indemnification Under Public Law 85–804.

As prescribed in 50.104–4, insert the following clause:

INDEMNIFICATION UNDER PUBLIC LAW 85–804 (APR 1984)

(a) Contractor’s principal officials, as used in this clause, means directors, officers, managers, superintendents, or other representatives supervising or directing—

1. All or substantially all of the Contractor’s business;
2. All or substantially all of the Contractor’s operations at any one plant or separate location in which this contract is being performed; or
3. A separate and complete major industrial operation in connection with the performance of this contract.

(b) Under Pub. L. 85–804 (50 U.S.C. 1431–1435) and Executive Order 10789, as amended, and regardless of any other provisions of this contract, the Government shall, subject to the limitations contained in the other paragraphs of this clause, indemnify the Contractor against—

1. Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death; personal injury; or loss of, damage to, or loss of use of property;
2. Loss of, damage to, or loss of use of Contractor property, excluding loss of profit; and
3. Loss of, damage to, or loss of use of Government property, excluding loss of profit.

(c) This indemnification applies only to the extent that the claim, loss, or damage (1) arises out of or results from a risk defined in this contract as unusually hazardous or nuclear and (2) is not compensated for by insurance or otherwise. Any such claim, loss, or damage, to the extent that it is within the deductible amounts of the Contractor’s insurance, is not covered under this clause. If insurance coverage or other financial protection in effect on the date the approving official authorizes use of this clause is reduced,
the Government’s liability under this clause shall not increase as a result.

(d) When the claim, loss, or damage is caused by willful misconduct or lack of good faith on the part of any of the Contractor’s principal officials, the Contractor shall not be indemnified for—

(1) Government claims against the Contractor (other than those arising through subrogation); or

(2) Loss or damage affecting the Contractor’s property.

(e) With the Contracting Officer’s prior written approval, the Contractor may, in any subcontract under this contract, indemnify the subcontractor against any risk defined in this contract as unusually hazardous or nuclear. This indemnification shall provide, between the Contractor and the subcontractor, the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and Government settlement or defense of claims as this clause provides. The Contracting Officer may also approve indemnification of subcontractors at any lower tier, under the same terms and conditions. The Government shall indemnify the Contractor against liability to subcontractors incurred under subcontract provisions approved by the Contracting Officer.

(f) The rights and obligations of the parties under this clause shall survive this contract’s termination, expiration, or completion. The Government shall make no payment under this clause unless the agency head determines that the amount is just and reasonable. The Government may pay the Contractor or subcontractors, or may directly pay parties to whom the Contractor or subcontractors may be liable.

(g) The Contractor shall—

(1) Promptly notify the Contracting Officer of any claim, loss, or damage covered by this clause in the manner and form the Government requires; and

(4) Comply with the Government’s directions and execute any authorizations required in connection with settlement or defense of claims or actions.

(h) The Government may direct, control, or assist in settling or defending any claim or action that may involve indemnification under this clause.

(End of clause)

Alternate I (APR 1984). In cost-reimbursement contracts, add the following paragraph (i) to the basic clause:

(i) The cost of insurance (including self-insurance programs) covering a risk defined in this contract as unusually hazardous or nuclear shall not be reimbursed except to the extent that the Contracting Officer has required or approved this insurance. The Government’s obligations under this clause are—

(1) Excepted from the release required under this contract’s clause relating to allowable cost; and

(2) Not affected by this contract’s Limitation of Cost or Limitation of Funds clause.


52.250–3 SAFETY Act Block Designation/Certification.

As prescribed in 50.206(b)(1), insert the following provision:

SAFETY ACT BLOCK DESIGNATION/CERTIFICATION (FEB 2009)

The Government has determined that for purposes of this solicitation the product(s) or service(s) being acquired by this action are neither presumptively nor actually entitled to a pre-determination that the products or services are qualified anti-terrorism technologies as that term is defined by the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act), 6 U.S.C. 441–444. This determination does not prevent sellers of technologies from applying for SAFETY Act protections in other contexts. Proposals in which either acceptance or pricing is made contingent upon SAFETY Act designation as a qualified anti-terrorism technology or SAFETY Act certification as an approved product for homeland security of the proposed product or service will not be considered for award. See Federal Acquisition Regulation subpart 50.2.

(End of provision)


52.250–4 SAFETY Act Coverage Not Applicable.

As prescribed in 50.206(a), insert the following provision:

SAFETY ACT COVERAGE NOT APPLICABLE (FEB 2009)

The Government has determined that for purposes of this solicitation the product(s) or service(s) being acquired by this action are neither presumptively nor actually entitled to a pre-determination that the products or services are qualified anti-terrorism technologies as that term is defined by the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act), 6 U.S.C. 441–444. This determination does not prevent sellers of technologies from applying for SAFETY Act protections in other contexts. Proposals in which either acceptance or pricing is made contingent upon SAFETY Act designation as a qualified anti-terrorism technology or SAFETY Act certification as an approved product for homeland security of the proposed product or service will not be considered for award. See Federal Acquisition Regulation subpart 50.2.

(End of provision)
United States air carrier or a United States flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States.

(3) Uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

Block certification means SAFETY Act certification of a technology class that the Department of Homeland Security (DHS) has determined to be an approved class of approved products for homeland security.

Block designation means SAFETY Act designation of a technology class that the DHS has determined to be a Qualified Anti-Terrorism Technology (QATT).

Qualified Anti-Terrorism Technology (QATT) means any technology designed, developed, modified, procured, or sold for the purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, for which a SAFETY Act designation has been issued. For purposes of defining a QATT, technology means any product, equipment, service (including support services), device, or technology (including information technology) or any combination of the foregoing. Design services, consulting services, engineering services, software development services, software integration services, threat assessment, vulnerability studies, and other analyses relevant to homeland security may be deemed a technology.

SAFETY Act certification means a determination by DHS pursuant to 6 U.S.C. 442(d), as further delineated in 6 CFR 25.9, that a QATT for which a SAFETY Act designation has been issued is an approved product for homeland security, i.e., it will perform as intended, conforms to the seller’s specifications, and is safe for use as intended.

SAFETY Act designation means a determination by DHS pursuant to 6 U.S.C. 441(b) and 6 U.S.C. 443(a), as further delineated in 6 CFR 25.4, that a particular Anti-Terrorism Technology constitutes a QATT under the SAFETY Act.

(b) The Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act), 6 U.S.C. 441–444, creates certain liability limitations for claims arising out of, relating to, or resulting from an act of terrorism where QATTs have been deployed. It also confers other important benefits. SAFETY Act designation and SAFETY Act certification are designed to support effective technologies aimed at preventing, detecting, identifying, or deterring acts of terrorism, or limiting the harm that such acts might otherwise cause, and which also meet other prescribed criteria. For some classes of technologies, DHS may issue a block designation/certification in order to lessen the burdens for filing for SAFETY Act designation or SAFETY Act certifications by not requiring applicants to provide certain information otherwise required and in order to offer expedited review of any application submitted pursuant to a block designation/certification. Block designations/certifications will be issued only for technologies that rely on established performance standards or defined technical characteristics.

(c) (1) DHS has issued a block designation or block certification for the technology to be acquired under this solicitation.

(2) This block designation or block certification is attached to this solicitation and contains essential information, including—

(i) A detailed description of and specifications for the technology covered by the block designation or block certification.

(ii) A listing of those portions of the SAFETY Act application kit that must be completed and submitted by applicants;

(iii) The date of its expiration; and

(iv) Any other terms and conditions.

(3) Offerors should read this block designation or block certification carefully to make sure they comply with its terms if they plan to take advantage of SAFETY Act coverage for their technology(ies).

(d) All determinations by DHS are based on factors set forth in the SAFETY Act and its implementing regulations. A determination by DHS to issue a SAFETY Act designation, or not to issue a SAFETY Act designation for a particular technology as a QATT is not a determination that the technology meets, or fails to meet, the requirements of any solicitation issued by any Federal, State, local or tribal governments. Determinations by DHS with respect to whether to issue a SAFETY Act designation for technologies submitted for DHS review are based on the factors identified in 6 CFR 25.4(b).

(e) Neither SAFETY Act designation nor certification is in any way a requirement of this action. Whether to seek the benefits of the SAFETY Act for a proposed product or service is entirely up to the offeror. Additional information about the SAFETY Act and this block designation/certification may be found at the SAFETY Act website at http://www.SAFETYAct.gov or requests may be mailed to: Directorate of Science and Technology, SAFETY Act Room 4320, Department of Homeland Security, Washington, DC 20528.

(f) Proposals in which pricing or any other terms or conditions are offered contingent upon SAFETY Act designation or SAFETY Act certification of the proposed product(s) or service(s) will not be considered for award.
Federal Acquisition Regulation

(End of provision)

Alternate I (FEB 2009). As prescribed in 50.206(b)(2), substitute the following paragraph (f):

(f)(1) Offerors are authorized to submit proposals made contingent upon SAFETY Act designation (or SAFETY Act certification, if a block certification exists) before award. When an offer is made contingent upon SAFETY Act designation or certification, the offeror also may submit an alternate offer without the contingency.

(2) If an offer is submitted contingent upon receipt of SAFETY Act designation (or SAFETY Act certification, if a block certification exists) prior to contract award, then the Government may not award a contract based on such offer unless the offeror demonstrates prior to award that DHS has issued a SAFETY Act designation (or SAFETY Act certification, if a block certification exists) for the offeror’s technology.

(3) The Government reserves the right to award the contract based on a noncontingent offer, prior to DHS resolution of the offeror’s SAFETY Act designation (or SAFETY Act certification, if a block certification exists).

Alternate II (FEB 2009). As prescribed in 50.206(b)(3), substitute the following paragraph (f):

(f)(1) Offerors are authorized to submit offers presuming that SAFETY Act designation (or SAFETY Act certification, if a block certification exists) will be obtained before or after award.

(2) An offeror is eligible for award only if the offeror—

(i) Files a SAFETY Act designation (or SAFETY Act certification) application, limited to the scope of the applicable block designation (or block certification), within 15 days after submission of the proposal;

(ii) Pursues its SAFETY Act designation (or SAFETY Act certification) application in good faith; and

(iii) Agrees to obtain the amount of insurance DHS requires for issuing the offeror’s SAFETY Act designation (or SAFETY Act certification).

(3) If DHS has not issued a SAFETY Act designation (or SAFETY Act certification) to the successful offeror before contract award, the contracting officer will include the clause at 52.250-5 in the resulting contract.


52.250-4 SAFETY Act Pre-qualification Designation Notice.

As prescribed in 50.206(c)(1), insert the following provision:

SAFETY ACT PRE-QUALIFICATION DESIGNATION NOTICE (FEB 2009)

(a) Definitions. As used in this provision—

Act of terrorism means any act determined to have met the following requirements or such other requirements as defined and specified by the Secretary of Homeland Security:

1. Is unlawful.

2. Causes harm, including financial harm, to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States.

3. Uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

Block certification means SAFETY Act certification of a technology class that the Department of Homeland Security (DHS) has determined to be an approved class of approved products for homeland security.

Block designation means SAFETY Act designation of a technology class that the DHS has determined to be a Qualified Anti-Terrorism Technology (QATT).

Pre-qualification designation notice means a notice in a procurement solicitation or other publication by the Government stating that the technology to be procured either affirmatively or presumptively satisfies the technical criteria necessary to be deemed a qualified anti-terrorism technology. A pre-qualification designation notice authorizes offeror(s) to submit streamlined SAFETY Act applications for SAFETY Act designation and receive expedited processing of those applications.

Qualified Anti-Terrorism Technology (QATT) means any technology designed, developed, modified, procured, or sold for the purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, for which a SAFETY Act designation has been issued.

For purposes of defining a QATT, technology means any product, equipment, service (including support services), device or technology (including information technology) or any combination of the foregoing. Design services, consulting services, engineering services, software development services, software integration services, threat assessments, vulnerability studies, and other analyses relevant to homeland security may be deemed a technology.
SAFETY Act certification means a determination by DHS pursuant to 6 U.S.C. 442(d), as further delineated in 6 CFR 23.9, that a QATT for which a SAFETY Act designation has been granted is an approved product for homeland security, i.e., it will perform as intended, conforms to the seller’s specifications, and is safe for use as intended.

SAFETY Act designation means a determination by DHS pursuant to 6 U.S.C. 441(b) and 6 U.S.C. 443(a), as further delineated in 6 CFR 23.4, that a particular Anti-Terrorism Technology constitutes a QATT under the SAFETY Act.

(b) The Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act), 6 U.S.C. 441–444, creates certain liability limitations for claims arising out of, relating to, or resulting from an act of terrorism, where QATTs have been deployed. It also confers other important benefits. SAFETY Act designation and SAFETY Act certification are designed to support effective technologies aimed at preventing, detecting, identifying, or deterring acts of terrorism, or limiting the harm that such acts might otherwise cause, and which also meet other prescribed criteria.

(c)(1) DHS has issued a SAFETY Act prequalification designation notice for the technology to be acquired under this solicitation. It also confers other important benefits. SAFETY Act designation and SAFETY Act certification are designed to support effective technologies aimed at preventing, detecting, identifying, or deterring acts of terrorism, or limiting the harm that such acts might otherwise cause, and which also meet other prescribed criteria.

(ii) A statement that the technology described and specified in the notice satisfies the technical criteria to be deemed a QATT and the offeror’s proposed technology either may presumptively or will qualify for the issuance of a designation provided the offeror complies with terms and conditions in the notice and its application is approved;

(iii) The period of time within which DHS will take action upon submission of a SAFETY Act application submitted pursuant to the notice;

(iv) A listing of those portions of the application that must be completed and submitted by selected awardees and the time periods for such submissions;

(v) The date of expiration of the notice; and

(vi) Any other terms and conditions concerning the notice.

(d) Offerors should read this notice carefully to make sure they comply with the terms of the notice if they plan on taking advantage of SAFETY Act coverage for their technologies.

(i) Files a SAFETY Act designation application, limited to the scope of the applicable prequalification designation notice, within 15 days after submission of the proposal;

(ii) Pursues its SAFETY Act designation application in good faith; and

(iii) Agrees to obtain the amount of insurance DHS requires for issuing the offeror’s SAFETY Act designation.

(3) If DHS has not issued a SAFETY Act designation to the successful offeror before contract award, the contracting officer will...
include the clause at 52.250–5 in the resulting contract.


52.250–5 SAFETY Act—Equitable Adjustment.

As prescribed in 50.206(d), insert the following clause:

SAFETY ACT—EQUITABLE ADJUSTMENT (FEB 2009)

(a) Definitions. As used in this clause—
Act of terrorism means any act determined to have met the following requirements or such other requirements as defined and specified by the Secretary of Homeland Security:
1. Is unlawful.
2. Causes harm, including financial harm, to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States.
3. Uses or attempts to use instrumentality, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

Block designation means SAFETY Act certification of a technology class that the Department of Homeland Security (DHS) has determined to be an approved class of approved products for homeland security.

Block certification means SAFETY Act designation of a technology class that the DHS has determined to be a Qualified Anti-Terrorism Technology (QATT). Qualified Anti-Terrorism Technology (QATT) means any technology designed, developed, modified, procured, or sold for the purpose of preventing, detecting, identifying, or determining acts of terrorism or limiting the harm such acts might otherwise cause, for which a SAFETY Act designation has been issued. For purposes of defining a QATT, technology means any product, equipment, service (including support services), device, or technology (including information technology) or any combination of the foregoing. Design services, consulting services, engineering services, software development services, software integration services, threat assessments, vulnerability studies, and other analyses relevant to homeland security may be deemed a technology.

SAFETY Act certification means a determination by DHS pursuant to 6 U.S.C. 442(d), as further delineated in 6 CFR 23.9, that a QATT for which a SAFETY Act designation has been issued is an approved product for homeland security, i.e., it will perform as intended, conforms to the seller’s specifications, and is safe for use as intended.

SAFETY Act designation means a determination by DHS pursuant to 6 U.S.C. 441(b) and 6 U.S.C. 443(a), as further delineated in 6 CFR 25.4, that a particular Anti-Terrorism Technology constitutes a QATT under the SAFETY Act.

(b) Prices for the items covered by the pre-qualification designation notice, block designation, or block certification in the contract were established presuming DHS will issue a SAFETY Act designation (or SAFETY Act certification) for those items.

(c) In order to qualify for an equitable adjustment in accordance with paragraph (d) of this clause the Contractor shall in good faith pursue obtaining—
(1) SAFETY Act designation (or SAFETY Act certification); and
(2) The amount of insurance DHS requires for issuing any SAFETY Act designation (or SAFETY Act certification).

(d)(1) If DHS denies the Contractor’s SAFETY Act designation (or certification) application, the Contractor may submit a request for an equitable adjustment within 30 days of DHS’s notification of denial.
(2) The Contracting Officer shall either—
(i) Make an equitable adjustment to the contract price based on evidence of the resulting increase or decrease in the Contractor’s costs and/or an equitable adjustment to other terms and conditions based on lack of SAFETY Act designation (or certification); or
(ii) At the sole option of the Government, terminate this contract for the convenience of the Government in place of an equitable adjustment.
(3) A failure of the parties to agree on the equitable adjustment will be considered to be a dispute in accordance with the “Disputes” clause of this contract.
(4) Unless first terminated, the Contractor shall continue contract performance during establishment of any equitable adjustment.

(End of clause)


52.251–1 Government Supply Sources.

As prescribed in 51.107, insert the following clause in solicitations and contracts when the contracting officer may authorize the contractor to acquire supplies or services from a Government supply source:

GOVERNMENT SUPPLY SOURCES (APR 1984)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this
contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be Government-furnished property, as distinguished from Government property. The provisions of the clause entitled Government Property, except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

(End of clause)


52.251–2 Interagency Fleet Management System Vehicles and Related Services.

As prescribed in 51.285, insert the following clause:

INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system vehicles and related services for use in the performance of this contract. The use, service, and maintenance of interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101–39 and 41 CFR 101–38.301–1.

(End of clause)


52.252–1 Solicitation Provisions Incorporated by Reference.

As prescribed in 51.205, insert the following provision:

SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(End of provision)


52.252–2 Clauses Incorporated by Reference.

As prescribed in 52.107(b), insert the following clause:

CLauses Incorporated by Reference (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(End of clause)


52.252–3 Alterations in Solicitation.

As prescribed in 52.107(c), insert the following provision in solicitations in order to revise or supplement, as necessary, other parts of the solicitation that apply to the solicitation phase only, except for any provision authorized for use with a deviation. Include clear identification of what is being altered.

ALTERATIONS IN SOLICITATION (APR 1984)

Portions of this solicitation are altered as follows:

(End of provision)

52.252–4 Alterations in Contract.

As prescribed in 52.107(d), insert the following clause in solicitations and contracts in order to revise or supplement, as necessary, other parts of the contract, or parts of the solicitation that apply after contract award, except for any clause authorized for use with a deviation. Include clear identification of what is being altered.

ALTERATIONS IN CONTRACT (APR 1984)

Portions of this contract are altered as follows:
Federal Acquisition Regulation

Pt. 53

52.252–5 Authorized Deviations in Provisions.

As prescribed in 52.107(e), insert the following provision in solicitations that include any FAR or supplemental provision with an authorized deviation. Whenever any FAR or supplemental provision is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the provision when it is used without deviation, include regulation name for any supplemental provision, except that the contracting officer shall insert $(DEVIAION) after the date of the provision.

AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR chapter 1) provision with an authorized deviation is indicated by the addition of $(DEVIAION) after the date of the provision.

(b) The use in this solicitation of any provision with an authorized deviation is indicated by the addition of $(DEVIAION) after the name of the regulation.

(End of provision)

52.252–6 Authorized Deviations in Clauses.

As prescribed in 52.107(f), insert the following clause in solicitations and contracts that include any FAR or supplemental clause with an authorized deviation. Whenever any FAR or supplemental clause is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the clause when it is used without deviation, include regulation name for any supplemental clause, except that the contracting officer shall insert $(DEVIAION) after the date of the clause.

AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR chapter 1) clause with an authorized deviation is indicated by the addition of $(DEVIAION) after the date of the clause.

(b) The use in this solicitation or contract of any clause with an authorized deviation is indicated by the addition of $(DEVIAION) after the name of the regulation.

(End of clause)

52.253–1 Computer Generated Forms.

As prescribed in FAR 53.111, insert the following clause:

COMPUTER GENERATED FORMS (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(End of clause)

[55 FR 52800, Dec. 21, 1990]

Subpart 52.3—Provision and Clause Matrix

52.300 Scope of subpart.

The matrix in this subpart contains a column for each principal type and/or purpose of contract (see 52.101(e)).

[55 FR 3890, Feb. 5, 1990]

52.301 Solicitation provisions and contract clauses (Matrix).

NOTE: The FAR matrix is not carried in the CFR. It is available in the loose-leaf edition.


PART 53—FORMS
Subpart 53.1—General

53.100 Scope of subpart.
53.101 Requirements for use of forms.
53.102 Current editions.
53.103 Exceptions.
53.104 Overprinting.
53.105 Computer generation.
53.106 Special construction and printing.
53.107 Obtaining forms.
53.108 Recommendations concerning forms.
53.109 Forms prescribed by other regulations.
53.110 Continuation sheets.
53.111 Contract clause.

Subpart 53.2—Prescription of Forms

53.200 Scope of subpart.
53.201 Federal acquisition system.
53.201–1 Contracting authority and responsibilities (SF 1402).
53.202–53.203 [Reserved]
53.204 Administrative matters.
53.204–1 Safeguarding classified information within industry (DD Form 254, DD Form 441).
53.204–2 [Reserved]
53.205 Publicizing contract actions.
53.205–1 Paid advertisements.
53.205–2 [Reserved]
53.206–53.208 [Reserved]
53.209 Contractor qualifications.
53.209–1 Responsible prospective contractors.
53.210–53.211 [Reserved]
53.212 Acquisition of commercial items.
53.213 Simplified acquisition procedures (SF’s 18, 30, 44, 1165, and 1449, and OF’s 336, 347, and 348).
53.214 Sealed bidding.
53.215 Contracting by negotiation.
53.215–1 Solicitation and receipt of proposals.
53.216 Types of contracts.
53.216–1 Delivery orders and orders under basic ordering agreements (OF 347).
53.217–53.218 [Reserved]
53.219 Small business programs.
53.220–53.221 [Reserved]
53.223–53.227 [Reserved]
53.228 Bonds and insurance.
53.229 Taxes (SF’s 1094, 1094–A).
53.230–53.231 [Reserved]
53.232 Contract financing (SF 1443).
53.233–53.234 [Reserved]
53.235 Research and Development Contracting (SF 298).
53.236 Construction and architect-engineer contracts.
53.236–1 Construction.
53.236–2 Architect-engineer services (SF’s 292 and 330).
53.237–53.241 [Reserved]
53.242 Contract administration.

48 CFR Ch. 1 (10–1–09 Edition)

53.242–1 Novation and change-of-name agreements (SF 30).
53.243 Contract modifications (SF 30).
53.244 [Reserved]
53.245 Government property.
53.246 [Reserved]
53.247 Transportation (U.S. Commercial Bill of Lading).
53.248 [Reserved]
53.249 Termination of contracts.
53.250 [Reserved]
53.251 Contractor use of Government supply sources (OF 947).

Subpart 53.3—Illustrations of Forms

53.300 Scope of subpart.
53.301 Standard forms.
53.301–18 SF 18 (Rev. 6/95), Request for Quotations.
53.301–24 Bid Bond.
53.301–25 Performance Bond.
53.301–25–A Payment Bond.
53.301–26 Award/Contract.
53.301–28 Affidavit of Individual Surety.
53.301–30 Standard Form 30, Amendment of Solicitation/Modification of Contract.
53.301–33 Solicitation, Offer and Award.
53.301–34 Annual Bid Bond.
53.301–35 Annual Performance Bond.
53.301–98 Standard Form 98, Notice of Intention To Make a Service Contract and Response to Notice.
53.301–98a Standard Form 98a, Notice of Intention To Make a Service Contract and Response to Notice (Attachment A).
53.301–99 Standard Form 99, Notice of Award of Contract.
53.301–120 Standard Form 120, Report of Excess Personal Property.
53.301–120–A Standard Form 120–A, Continuation Sheet (Report of Excess Personal Property).
53.301–273 Reinsurance Agreement for a Miller Act Performance Bond.
53.301–274 Reinsurance Agreement for a Miller Act Payment Bond.
53.301–275 Reinsurance Agreement in Favor of the United States.
53.301–302 Standard Form 302, Request for Determination and Response to Request.
Federal Acquisition Regulation 53.000

53.301–1034 Standard Form 1034, Public Voucher for Purchases and Services Other Than Personal.
53.301–1035 Standard Form 1035, Public Voucher for Purchases and Services Other Than Personal—Memorandum Sheet.
53.301–1035A Standard Form 1035A, Public Voucher for Purchases and Services Other Than Personal—Memorandum Copy.
53.301–1037 Standard Form 1037, Public Voucher for Purchases and Services Other Than Personal—Continuation Sheet.
53.301–1039 Settlement Proposal for Cost-Reimbursement Type Contracts.
53.301–1037 Settlement Proposal for Cost-Reimbursement Type Contracts.
53.301–1038 Settlement Proposal (Short Form).
53.301–1039 Schedule of Accounting Information.
53.301–1040 Application for Partial Payment.
53.301–1042 Settlement Proposal (Construction, Alteration, or Repair).
53.301–1043 Standard Form 1443, Contractor’s Request for Progress Payment.
53.301–1044 Request for Authorization of Additional Classification and Rate.
53.301–1047 Solicitation/Contract.
53.302 Optional forms.
53.302–17 Optional Form 17, Offer Label.
53.302–90 Release of Lien on Real Property.
53.302–91 Release of Personal Property From Escrow.
53.302–307 Optional Form 307, Contract Award.
53.302–308 Optional Form 308, Solicitation and Offer—Negotiated Acquisition.
53.302–309 Optional Form 309, Amendment of Solicitation.
53.302–333 Procurement Integrity Certification for Procurement Officials.
53.302–336 Optional Form 336, Continuation Sheet.
53.302–347 Order for Supplies or Services.
53.302–348 Order for Supplies or Services Schedule—Continuation.
53.303 Agency forms.
53.303–DD–411 Department of Defense DD Form 411, Security Agreement.
53.303–WH–347 Department of Labor Form WH–347, Payroll (For Contractor’s Optional Use).

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42637, Sept. 19, 1983, unless otherwise noted.

53.000 Scope of part.

This part (a) prescribes standard forms (SF’s) and references optional forms (OF’s) and agency-prescribed
forms for use in acquisition, (b) contains requirements and information generally applicable to the forms, and (c) illustrates the forms.

53.001 Definitions.
Exception, as used in this part, means an approved departure from the established design, content, printing specifications, or conditions for use of any standard form.

Subpart 53.1—General

53.100 Scope of subpart.
This subpart contains requirements and information generally applicable to the forms prescribed in this regulation.

53.101 Requirements for use of forms.
The requirements for use of the forms prescribed or referenced in this part are contained in parts 1 through 52, where the subject matter applicable to each form is addressed. The specific location of each requirement is identified in subpart 53.2.

53.102 Current editions.
The form prescriptions in subpart 53.2 and the illustrations in subpart 53.3 contain current edition dates. Contracting officers shall use the current editions unless otherwise authorized under this regulation.

53.103 Exceptions.
Agencies shall not (a) alter a standard form prescribed by this regulation, or (b) use for the same purpose any form other than the standard form prescribed by this regulation without receiving in advance an exception to the form.

53.104 Overprinting.
Standard and optional forms (obtained as required by 53.107) may be overprinted with names, addresses, and other uniform entries that are consistent with the purpose of the form and that do not alter the form in any way. Exception approval for overprinting is not needed.

53.105 Computer generation.
(a) Agencies may computer-generate the Standard and Optional Forms prescribed in the FAR without exception approval (see 53.103), provided—
(1) The form is in an electronic format that complies with Federal Information Processing Standard Number 161; or
(2) There is no change to the name, content, or sequence of the data elements, and the form carries the Standard or Optional Form number and edition date.

(b) The forms prescribed by this part may be computer generated by the public. Unless prohibited by agency regulations, forms prescribed by agency FAR supplements may also be computer generated by the public. Computer generated forms shall either comply with Federal Information Processing Standard Number 161 or shall retain the name, content, or sequence of the data elements, and shall carry the Standard or Optional Form or agency number and edition date (see 53.111).

53.106 Special construction and printing.
Contracting offices may request exceptions (see 53.103) to standard forms for special construction and printing. Examples of common exceptions are as follows:

<table>
<thead>
<tr>
<th>Standard Forms</th>
<th>Special Construction and Printing</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) SF 18—_______</td>
<td>(1) With vertical lines omitted (for listing of supplies and services, unit, etc.);</td>
</tr>
<tr>
<td></td>
<td>(2) As reproducible masters; and/or</td>
</tr>
<tr>
<td></td>
<td>(3) In carbon interleaved pads or sets.</td>
</tr>
<tr>
<td></td>
<td>As die-cut stencils or reproducible masters.</td>
</tr>
<tr>
<td>(b) SF’s 26,30,33,1447—.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(1) With serial numbers and contracting office name and address; and/or</td>
</tr>
<tr>
<td>(c) SF 44—_______</td>
<td>(2) On special weight of paper and with the type of construction, number of sets per book, and number of parts per set as specified by the contracting officer. (Executive agencies may supplement the administrative instructions on the inside front cover of the book.)</td>
</tr>
<tr>
<td></td>
<td>(d) SF 1442—_______</td>
</tr>
</tbody>
</table>

48 CFR Ch. 1 (10–1–09 Edition)
53.200 Prescription of Forms

53.200 Scope of subpart.

This subpart prescribes standard forms and references optional forms and agency-prescribed forms for use in acquisition. Consistent with the approach used in subpart 52.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR in which the form usage requirements are addressed. For example, forms addressed in FAR part 14, Sealed Bidding, are treated in this subpart in section 53.214, Sealed Bidding; forms addressed in FAR part 43, Contract Modifications, are treated in this subpart in section 53.243, Contract modifications. The following example illustrates how the subjects are keyed to the parts in which they are addressed:

53.200 Scope of subpart.

This subpart prescribes standard forms and references optional forms and agency-prescribed forms for use in acquisition. Consistent with the approach used in subpart 52.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR in which the form usage requirements are addressed. For example, forms addressed in FAR part 14, Sealed Bidding, are treated in this subpart in section 53.214, Sealed Bidding; forms addressed in FAR part 43, Contract Modifications, are treated in this subpart in section 53.243, Contract modifications. The following example illustrates how the subjects are keyed to the parts in which they are addressed:
53.201 Federal acquisition system.

53.201–1 Contracting authority and responsibilities (SF 1402).

SF 1402 (10/83), Certificate of Appointment. SF 1402 is prescribed for use in appointing contracting officers, as specified in 1.603–5.

53.202–53.203 [Reserved]

53.204 Administrative matters.

53.204–1 Safeguarding classified information within industry (DD Form 254, DD Form 441).

The following forms, which are prescribed by the Department of Defense, shall be used by agencies covered by the Defense Industrial Security Program if contractor access to classified information is required, as specified in subpart 4.4 and the clause at 52.204–2:

(a) DD Form 254 (Department of Defense (DOD)). Contract Security Classification Specification. (See 4.403(c)(1)).
(b) DD Form 441 (DOD), Security Agreement. (See paragraph (b) of the clause at 52.204–2.)

53.204–2 [Reserved]

53.205 Publicizing contract actions.

53.205–1 Paid advertisements.

SF 1449, prescribed in 53.212, shall be used to place orders for paid advertisements as specified in 5.503.

53.206–53.208 [Reserved]

53.209 Contractor qualifications.

53.209–1 Responsible prospective contractors.

(a) SF 1403 (Rev. 9/88), Preaward Survey of Prospective Contractor (General).

SF 1403 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(b) SF 1404 (Rev. 9/88), Preaward Survey of Prospective Contractor—Technical. SF 1404 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(c) SF 1405 (Rev. 9/88), Preaward Survey of Prospective Contractor—Production. SF 1405 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(d) SF 1406 (Rev. 11/97), Preaward Survey of Prospective Contractor—Quality Assurance. SF 1406 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(e) SF 1407 (Rev. 9/88), Preaward Survey of Prospective Contractor—Financial Capability. SF 1407 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(f) SF 1408 (Rev. 9/88), Preaward Survey of Prospective Contractor—Accounting System. SF 1408 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

53.210–53.211 [Reserved]

53.212 Acquisition of commercial items.

53.212–1 [Reserved]

53.212–3 Solicitation/Contract for Commercial Items. SF 1449 (Rev. 3/2005), Solicitation/Contract/Order for Commercial Items. SF 1449 is prescribed for use in solicitations and contracts for commercial items. Agencies may prescribe additional detailed instructions for use of the form.

53.212–5 Simplified acquisition procedures (SF’s 18, 30, 44, 1165, and 1449, and OP’s 336, 347, and 348).

The following forms are prescribed as stated in this section for use in simplified acquisition procedures, orders
under existing contracts or agreements, and orders from required sources of supplies and services:

(a) SF 18 (Rev. 6/95), Request for Quotations, or SF 1449 (Rev. 3/2005), Solicitation/Contract/Order for Commercial Items. SF 18 is prescribed for use in obtaining price, cost, delivery, and related information from suppliers as specified in 13.307(b). SF 1449, as prescribed in 53.212, or other agency forms/automated formats, may also be used to obtain price, cost, delivery, and related information from suppliers as specified in 13.307(b).

(b) SF 30 (Rev. 10/83), Amendment of Solicitation/Modification of Contract. SF 30, prescribed in 53.243, may be used for modifying purchase orders, as specified in 13.307(c)(3).

(c) SF 44 (Rev. 10/83), Purchase Order Invoice Voucher. SF 44 is prescribed for use in simplified acquisition procedures, as specified in 13.306.

(d) SF 1165 (6/83 Ed.), Receipt for Cash-Subvoucher. SF 1165 (GAO) may be used for imprest fund purchases, as specified in 13.307(e).

(e) OF 336 (4/86 Ed.), Continuation Sheet. OF 336 may be used as a continuation sheet in solicitations, as specified in 13.307(c)(1).

(f) SF 1449 (Rev. 3/2005) Solicitation/Contract/Order for Commercial Items prescribed in 53.212. OF 347 (Rev. 4/06), Order for Supplies or Services, and OF 348 (Rev. 4/06), Order for Supplies or Services-Schedule Continuation. SF 1449, OP’s 347 and 348 (or approved agency forms/automated formats) may be used as follows:

1. To accomplish acquisitions under simplified acquisition procedures, as specified in 13.307.

2. To establish blanket purchase agreements (BPA’s), as specified in 13.303–2, and to make purchases under BPA’s, as specified in 13.303–5.

3. To issue orders under basic ordering agreements, as specified in 16.703(d)(2)(i).

4. As otherwise specified in this chapter (e.g., see 5.503(a)(2), 8.406–1, 36.701(b), and 51.102(e)(3)(i)).

53.214 Sealed bidding.

The following forms are prescribed for use in contracting by sealed bidding (except for construction and architect-engineer services):

(a) SF 26 (APR 2008), Award/Contract. SF 26 is prescribed for use in awarding sealed bid contracts for supplies or services in which bids were obtained on SF 33, Solicitation, Offer and Award, as specified in 14.408–1(d)(1). Pending issuance of a new edition of the form, the reference in block 1 should be amended to read 15 CFR 700.

(b) SF 30, Amendment of Solicitation/Modification of Contract. SF 30, prescribed in 53.243, shall be used in amending invitations for bids, as specified in 14.208(a).

(c) SF 33 (Rev. 9/97), Solicitation, Offer and Award. SF 33 is prescribed for use in soliciting bids for supplies or services and for awarding the contracts that result from the bids, as specified in 14.201–2(a)(1), unless award is accomplished by SF 26.

(d) SF 1447 (APR 2008), Solicitation/Contract. SF 1447 is prescribed for use in soliciting supplies or services and for awarding contracts that result from the bids. It shall be used when the simplified contract format is used (see 14.201–9) and may be used in place of the SF 26 or SF 33 with other solicitations and awards. Agencies may prescribe additional detailed instructions for use of the form.

(e) [Reserved]

(f) SF 1409 (Rev. 9/88), Abstract of Offers, and SF 1410 (9/88), Abstract of Offers-Continuation. SF 1409 and SF 1410 are prescribed for use in recording bids, as specified in 14.403(a).

(g) OF 17 (Rev. 12/93), Offer Label. OF 17 may be furnished with each invitation for bids to facilitate identification and handling of bids, as specified in 14.202–3(b).

(h) OF 336 (Rev. 3/86), Continuation Sheet. OF 336 may be used as a continuation sheet in solicitations, as specified in 14.201–2(b).

[48 FR 42637, Sept. 19, 1983]

EDITORIAL NOTE: For Federal Register citations affecting §53.214, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.
53.215 Contracting by negotiation.

53.215–1 Solicitation and receipt of proposals.

The following forms are prescribed, as stated in the following paragraphs, for use in contracting by negotiation (except for construction, architect-engineer services, or acquisitions made using simplified acquisition procedures):

(a) SF 26 (APR 2008), Award/Contract. SF 26, prescribed in 53.214(a), may be used in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in 15.509.

(b) SF 30 (Rev. 10/83), Amendment of Solicitation/Modification of Contract. SF 30, prescribed in 53.243, may be used for amending requests for proposals and for amending requests for information, as specified in 15.210(b).

(c) SF 33 (Rev. 9/97), Solicitation, Offer and Award. SF 33, prescribed in 53.214(c), may be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be made by either OF 307, SF 33, or SF 26, as specified in 53.214(c) and 15.509.

(d) OF 17 (Rev. 12/93), Offer Label. OF 17 may be furnished with each request for proposals to facilitate identification and handling of proposals, as specified in 15.210(c).

(e) OF 307 (9/97), Contract Award. OF 307 may be used to award negotiated contracts as specified in 15.509.

(f) OF 308 (9/97), Solicitation and Offer-Negotiated Acquisition. OF 308 may be used to support solicitation of negotiated contracts as specified in 15.210(a). Award of such contracts may be made by OF 307, as specified in 15.509.

(g) OF 309 (9/97), Amendment of Solicitation. OF 309 may be used to amend solicitations of negotiated contracts, as specified in 15.210(b).


53.215–2 Types of contracts.

53.216–1 Delivery orders and orders under basic ordering agreements (OF 347).

OF 347, Order for Supplies or Services. OF 347, prescribed in 53.213(f), or an approved agency form may be used to place orders under indefinite delivery contracts and basic ordering agreements, as specified in 16.709(d)(2)(i).

53.217–53.218 [Reserved]

53.219 Small business programs.

The following form may be used in reporting small disadvantaged business contracting data: OF 312 (10/00), Small Disadvantaged Business Participation Report. (See subpart 19.12.)

[73 FR 21783, Apr. 22, 2008]

53.220–53.221 [Reserved]

53.222 Application of labor laws to Government acquisitions (SF’s 308, 1093, 1413, 1444, 1445, 1446, WH–347).

The following forms are prescribed as stated below, for use in connection with the application of labor laws:

(a) [Reserved]

(b) [Reserved]

(c) SF 308 (DOL) (Rev. 5/85), Request for Wage Determination and Response to Request. (See 22.404–3 (a) and (b).)

(d) SF 1093 (GAO) (10/71), Schedule of Withholdings under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act. (See 22.406–9(c)(1).)

(e) SF 1413 (Rev. 7/2005), Statement and Acknowledgment. SF 1413 is prescribed for use in obtaining contractor acknowledgment of inclusion of required clauses in subcontracts, as specified in 22.406–5.

(f) Form SF 1444 (10/87), Request for Authorization of Additional Classification and Rate. (See 22.406–3(a) and 22.1019.)

(g) SF 1445 (12/96), Labor Standards Interview. (See 22.406–7(b).)

(h) SF 1446 (10/87), Labor Standards Investigation Summary Sheet. (See 22.406–8(d).)
53.228 Bonds and insurance.

The following standard forms are prescribed for use for bond and insurance requirements, as specified in part 28:

(a) SF 24 (Rev. 10/98) Bid Bond. (See 28.106–1.) SF 24 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(b) SF 25 (Rev. 5/96) Performance Bond. (See 28.106–1(b).) SF 25 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(c) SF 25–A (Rev. 10/98) Payment Bond. (See 28.106–1(c).) SF 25–A is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(d) SF 25–B (Rev. 10/83), Continuation Sheet (For Standard Forms 24, 25, and 25–A). (See 28.106–1(d).)

(e) SF 28 (Rev. 6/03) Affidavit of Individual Surety. (See 28.106–1(e) and 28.203(b).) SF 28 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(f) SF 34 (Rev. 1/90), Annual Bid Bond. (See 28.106–1(f).) SF 34 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(g) SF 35 (Rev. 1/90), Annual Performance Bond. (See 28.106–1.) SF 35 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(h) SF 273 (Rev. 10/98) Reinsurance Agreement for a Miller Act Performance Bond. (See 28.106–1(h) and 28.202–1(a)(4).) SF 273 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(i) SF 274 (Rev. 10/98) Reinsurance Agreement for a Miller Act Payment Bond. (See 28.106–1(i) and 28.202–1(a)(4).) SF 274 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(j) SF 275 (Rev. 10/98) Reinsurance Agreement in Favor of the United States. (See 28.106–1(j) and 28.202–1(a)(4).) SF 275 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(k) SF 1414 (Rev. 10/93), Consent of Surety. SF 1414 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(l) SF 1415 (Rev. 7/93), Consent of Surety and Increase of Penalty. (See 28.108–1(l).) SF 1415 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(m) SF 1416 (Rev. 10/98) Payment Bond for Other Than Construction Contracts. (See 28.106–1(m).) SF 1416 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(n) SF 1418 (Rev. 2/99) Performance Bond for Other Than Construction Contracts. (See 28.106–1(n).) SF 1418 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(o) OF 90 (Rev. 1/90), Release of Lien on Real Property. (See 28.106–1(o) and 28.203–5(a).) OF 90 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(p) OF 91 (Rev. 1/90), Release of Personal Property from Escrow. (See 28.106–1(p) and 28.203–5(a).) OF 91 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

VerDate Nov 24 2008 09:58 Nov 04, 2009 Jkt 217206 PO 00000 Frm 00431 Fmt 8010 Sfmt 8010 Y:\SGML\217206.XXX 217206erowe on DSK5CLS3C1PROD with CFR
48 CFR Ch. 1 (10–1–09 Edition)

53.229 Taxes (SF’s 1094, 1094–A).

SF 1094 (Rev. 12/96), U.S. Tax Exemption Form, and SF 1094–A (Rev. 12/96), Tax Exemption Forms Accountability Record. SF’s 1094 and 1094–A are prescribed for use in establishing exemption from State or local taxes, as specified in 29.302(b).


53.230–53.231 [Reserved]

53.232 Contract financing (SF 1443).

SF 1443 (JUL 2009), Contractor’s Request for Progress Payment. SF 1443 is prescribed for use in obtaining contractors’ requests for progress payments.


53.233–53.234 [Reserved]

53.235 Research and Development Contracting (SF 298).

SF 298 (2/89), Report Documentation Page. SF 298 is prescribed for use in submitting scientific and technical reports to contracting officers and to technical information libraries, as specified in 35.010.

[55 FR 3890, Feb. 5, 1990]

53.236 Construction and architect-engineer contracts.

53.236–1 Construction.

The following forms are prescribed, as stated below, for use in contracting for construction, alteration, or repair, or dismantling, demolition, or removal of improvements.

(a)–(c) [Reserved]

(d) SF 1442 (4/83), Solicitation, Offer and Award (Construction, Alteration, or Repair). SF 1442 is prescribed for use in soliciting offers and awarding contracts expected to exceed the simplified acquisition threshold for (1) construction, alteration, or repair, or (2) dismantling, demolition, or removal of improvements (and may be used for contracts within the simplified acquisition threshold), as specified in 36.701(b).

(e) OF 347 (Rev. 3/2005), Order for Supplies or Services. OF 347, prescribed in 53.213(f), (or an approved agency form) may be used for contracts under the simplified acquisition threshold for (1) construction, alteration, or repair, or (2) dismantling, demolition, or removal of improvements, as specified in 36.701(c).

(f) OF 1419 (11/88), Abstract of Offers—Construction, and OF 1419A (11/88), Abstract of Offers—Construction, Continuation Sheet. OF’s 1419 and 1419A are prescribed for use in recording bids (and may be used for recording proposal evaluation information), as specified in 36.701(d).


53.236–2 Architect-engineer services (SF’s 252 and 330).

The following forms are prescribed for use in contracting for architect-engineer and related services:

(a) SF 252 (Rev. 10/83), Architect-Engineer Contract. SF 252 is prescribed for use in awarding fixed-price contracts for architect-engineer services, as specified in 36.702(a). [Pending issuance of a new edition of the form, Block 8, Negotiation Authority, is deleted.]

(b) SF 330 (1/04), Architect-Engineer Qualifications. SF 330 is prescribed for use in obtaining information from architect-engineer firms regarding their professional qualifications, as specified in 36.702(b). [Pending issuance of a new edition of the form, Block 8, Negotiation Authority, is deleted.]


53.237–53.241 [Reserved]

53.242 Contract administration.

53.242–1 Novation and change-of-name agreements (SF 30).

SF 30, Amendment of Solicitation/Modification of Contract. SF 30, prescribed in 53.243, shall be used in connection with novation and change of name agreements, as specified in 42.1203(h).

53.243 Contract modifications (SF 30). SF 30 (Rev. 10/83), Amendment of Solicitation/Modification of Contract. SF 30 is prescribed for use in amending invitation for bids, as specified in 14.208; modifying purchase and delivery orders, as specified in 13.302-3; and modifying contracts, as specified in 42.1203(h), 49.602-5, and elsewhere in this chapter. The form may also be used to amend solicitations for negotiated contracts, as specified in 15.210(b). Pending the publication of a new edition of the form, Instruction (b), Item 3 (effective date), is revised in paragraphs (3) and (5) as follows:

(b) Item 3 (effective date).

(3) For a modification issued as a confirming notice of termination for the convenience of the Government, the effective date of the confirming notice shall be the same as the effective date of the initial notice.

(5) For a modification confirming the termination contracting officer's previous letter determination of the amount due in settlement of a contract termination for convenience, the effective date shall be the same as the effective date of the previous letter determination.


53.244 [Reserved]

53.245 Government property.

The following forms are prescribed, as specified in this section, for use in reporting, reutilization, and disposal of Government property and in accounting for this property:


(b) SF 126 (GSA), Report of Personal Property for Sale, and SF 126–A (GSA), Report of Personal Property for Sale (Continuation Sheet). See FPMR 101–45.303 (41 CFR 101–45.303.).

(c) SF 1423 (Rev. 5/04), Inventory Verification Survey. See 45.602–1(b)(1) and 45.606–3.

(d) SF 1424 (Rev. 5/04), Inventory Disposal Report (See 45.605). SF 1424 is authorized for local reproduction.

(e) SF 1428 (Rev. 6/2007), Inventory Disposal Schedule, and SF 1429 (Rev. 5/04), Inventory Disposal Schedule—Continuation Sheet. (See 45.602–1, 49.303–2, 52.245–1, and 53.249(b).) SF’s 1428 and 1429 are authorized for local reproduction.


53.246 [Reserved]

53.247 Transportation (U.S. Commercial Bill of Lading).

The commercial bill of lading is the preferred document for the transportation of property, as specified in 47.101.

[71 FR 298, Jan. 3, 2006]

53.248 [Reserved]

53.249 Termination of contracts.

(a) The following forms are prescribed for use in connection with the termination of contracts, as specified in subpart 49.6:

(1) SF 1034 (GAO), Public Voucher for Purchases and Services Other Than Personal. (See 49.302(a).)

(2) SF 1435 (Rev. 9/97), Settlement Proposal (Inventory Basis). (See 49.602–1(a).) Standard Form 1435 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(3) SF 1436 (Rev. 5/04), Settlement Proposal (Total Cost Basis). (See 49.602–1(b).) Standard Form 1436 is authorized for local reproduction.

(4) SF 1437 (Rev. 9/97), Settlement Proposal for Cost-Reimbursement Type Contracts. (See 49.602–1(c) and 49.302.) Standard Form 1437 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(5) SF 1438 (Rev. 5/04), Settlement Proposal (Short Form). (See 49.602–1(d).) Standard Form 1438 is authorized for local reproduction.

(6) SF 1439 (Rev. 7/89), Schedule of Accounting Information. (See 49.602–3.) Standard Form 1439 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.
(7) SF 1440 (Rev. 7/89), Application for Partial Payment. (See 49.602–4.) Standard Form 1440 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the loose-leaf edition of the FAR.

(b) SF 1428 (Rev. 6/2007), Inventory Disposal Schedule, and Standard Form 1429 (Rev. 5/04), Inventory Disposal Schedule—Continuation Sheet, shall be used to support termination settlement proposals listed in paragraph (a) of this section, as specified in 49.602–2.


53.250 [Reserved]

53.251 Contractor use of Government supply sources (OF 347).

OF 347, Order for Supplies or Services. OF 347, prescribed in 53.213(f), may be used by contractors when requisitioning from the VA, as specified in 51.102(e)(3)(ii).


Subpart 53.3—Illustrations of Forms

53.300 Scope of subpart.

This subpart contains illustrations of forms used in acquisitions.

53.301 Standard forms.

This section illustrates the standard forms that are specified by the FAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the standard form numbers (e.g., Standard Form 18 appears as 53.301–18).

53.301–18—53.301–1449 Illustration of standard forms.

EDITORIAL NOTE: The forms appearing in sections 53.301–18 through 53.301–1449 follow the text of this subpart.

53.302 Optional forms.

This section illustrates the optional forms that are specified by the FAR for use in acquisitions. The numbering system is as indicated in 53.301.


EDITORIAL NOTE: The forms appearing in sections 53.302–17 through 53.302–1419A follow the text of this subpart.

53.303 Agency forms.

This section illustrates agency forms that are specified by the FAR for use in acquisitions. The forms are arranged numerically by agency. The numbering system is as indicated in 53.301.

53.303–254—53.303–347 Illustration of agency forms.

# Federal Acquisition Regulation

## 53.301–18

### 53.301–18 SF 18 (Rev. 6/95), Request for Quotations.

### Request for Quotation

1. **REQUEST FOR QUOTATION**
2. **THIS FORM IS NOT A SMALL BUSINESS SET-ASIDE**

#### 1. REQUEST NO.

#### 2. DATE ISSUED

#### 3. QUOTATION REQUEST NO.

#### 4. DATE FOR NOT IF UNDER SUBRA N 30 CALENDAR DAYS

#### 5. ISSUE BY

#### 6. DELIVER BY

#### 7. DELIVERY

#### 8. FOR INFORMATION CALL OR COLLECT CALLS

#### 9. TELEPHONE NUMBER

#### 10. FOR DESTINATION

#### 11. OTHER

#### 12. NAME

#### 13. COMPANY

#### 14. STREET ADDRESS

#### 15. CITY

#### 16. STATE

#### 17. ZIP CODE

#### 18. TOTAL QUOTATION

#### 19. QUOTATION DUE

#### 20. QUOTATION COMPLETED

### Schedule (Include Applicable Federal, State and Local Taxes)

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>SUPPLIED/EXPLAINED</th>
<th>QUANTITY</th>
<th>UNIT</th>
<th>UNIT PRICE</th>
<th>AMOUNT</th>
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</table>

### Discount for Prompt Payment

<table>
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<th>#</th>
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<tr>
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<td>10 CALENDAR DAYS</td>
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<tr>
<td>2.</td>
<td>30 CALENDAR DAYS</td>
</tr>
<tr>
<td>3.</td>
<td>30 CALENDAR DAYS</td>
</tr>
<tr>
<td>4.</td>
<td>CALENDAR DAYS</td>
</tr>
</tbody>
</table>

### Note

- **ADDITIOAL INFORMATION AND REQUIREMENTS**
- **ARE NOT ATTACHED**

#### 5. NAME OF QUOTER

#### 6. STREET ADDRESS

#### 7. CITY

#### 8. STATE

#### 9. ZIP CODE

#### 10. STANDARD FORM 18

[60 FR 34783, July 3, 1995]
## 53.301-24 Bid Bond.

<table>
<thead>
<tr>
<th>BID BOND</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE BOND EXECUTED (Must not be later than bid opening date)</td>
</tr>
<tr>
<td>OMB NO.: 9000-0045</td>
</tr>
</tbody>
</table>

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Register Secretariat (HPS), Federal Acquisition Policy Division, OMB, Washington, DC 20503.

<table>
<thead>
<tr>
<th>TYPE OF ORGANIZATION (4-digit)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRINCIPAL (Legal name and business address)</td>
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<tr>
<td>CORPORATE</td>
</tr>
<tr>
<td>PARTNERSHIP</td>
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<tr>
<td>INDIVIDUAL</td>
</tr>
<tr>
<td>JOINT VENTURE</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>SURETY/IES (Name and business address)</th>
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</table>

### PENAL SUM OF BOND

<table>
<thead>
<tr>
<th>REPORT OF SDB</th>
</tr>
</thead>
<tbody>
<tr>
<td>AMOUNT NOT TO EXCEED</td>
</tr>
<tr>
<td>MILLIONS</td>
</tr>
</tbody>
</table>

**OBLIGATION:**

We, the Principal and Surety, are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where Subsection 1 of this clause appears in the bid documents, the obligation is limited to the penal sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

### CONDITIONS:

The Principal has submitted the bid identified above. Therefore,

The above obligation is void if the Principal: (i) upon acceptance by the Government of the bid identified above, within the period specified therein for acceptance (within 10 days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid; or (ii) fails to execute the further contractual documents and give the bond(s) within the period specified therein for acceptance; or (iii) fails to complete the performance of the contract by the principal, or (iv) in the event of failure to execute such further contractual documents and give such bond(s), pays the Government for any cost of procuring the work which exceeds the amount of the bid.

Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government. Notice to the Surety/ies of extension(s) is waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

### WITNESS:

The Principal and Surety/ies executed this bid bond and affixed their seals on the above date.

#### PRINCIPAL

<table>
<thead>
<tr>
<th>SIGNATURE(S)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. (Seal)</td>
</tr>
<tr>
<td>2. (Seal)</td>
</tr>
<tr>
<td>3. (Seal)</td>
</tr>
</tbody>
</table>

#### INDIVIDUAL SURETY/IES

<table>
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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>1. (Seal)</td>
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<tr>
<td>2. (Seal)</td>
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</tbody>
</table>

#### CORPORATE SURETY/IES

<table>
<thead>
<tr>
<th>NAME &amp; ADDRESS</th>
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</thead>
<tbody>
<tr>
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</table>

<table>
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<th>STATE OF INC.</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
</tr>
<tr>
<td>LIABILITY LIMIT (1)</td>
</tr>
<tr>
<td>2.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>SIGNATURE(S)</th>
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</thead>
<tbody>
<tr>
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<td>2. (Seal)</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>NAME &amp; TITLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
</tr>
</tbody>
</table>

| 2. |

| 3. |

| 4. |

| 5. |
## INSTRUCTIONS

1. This form is authorized for use when a bid guaranty is required. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated “Principal” on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not to exceed __________ dollars).

4. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury’s list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed “CORPORATE SURETIES.” In the space designated “SURETY(IES)” on the face of the form, insert only the letter identification of the sureties.

   (b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word “Corporate Seal” and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

6. Type the name and title of each person signing this bond in the space provided.

7. In its application to negotiated contracts, the terms “bid” and “bidder” shall include “proposal” and “offeror.”

---

[83 FR 70293, Dec. 18, 1998]
53.301–25 Performance Bond.

53.301–25

PERFORMANCE BOND

(See instructions on reverse)

DATE BOND EXECUTED

Must be same or later than date of contract

OMN No.: 9000-0045

PUBLIC REPORTING BURDEN FOR THIS COLLECTION OF INFORMATION IS ESTIMATED TO AVERAGE 0.5 MINUTES PER RESPONSE, INCLUDING THE TIME FOR REVIEWING INSTRUCTIONS, SEARCHING EXISTING DATA SOURCES, GATHERING AND MAINTAINING THE DATA NEEDED, AND COMPLETING AND REVIEWING THE COLLECTION OF INFORMATION. SEND COMMENTS REGARDING THIS BURDEN ESTIMATE OR ANY OTHER ASPECT OF THIS COLLECTION OF INFORMATION, INCLUDING SUGGESTIONS FOR REDUCING THIS BURDEN, TO THE FAR SECRETARY (DFARS), FEDERAL ACQUISITION POLICY DIVISION, USA WASHINGTON, DC 20405.

PRINCIPAL (Legal name and business address)

TYPE OF ORGANIZATION (7th and)

☐ INDIVIDUAL ☐ PARTNERSHIP

☐ JOURNEY ☐ CORPORATION

STATE OF INCORPORATION

SURETY(IES) (Names and business addresses)

PENAL SUM OF BOND

MILLION$ THOUSAND$ HUNDRED$ CENTS

CONTRACT DATE

CONTRACT NO.

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severely" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal:

(a) (1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies); and during the life of any guaranty required under the contract; and (2) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Miller Act, (40 U.S.C. 270a-370i), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which the bond is furnished.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL

SIGNATURE(S)

1. ________________________________ (Seal)

2. ________________________________ (Seal)

3. ________________________________ (Seal)

NAMES & TITLES (Typed)

1. ________________________________

2. ________________________________

3. ________________________________

INDIVIDUAL SURETY(IES):

SIGNATURE(S)

1. ________________________________ (Seal)

NAMES & TITLES (Typed)

1. ________________________________

CORPORATE SURETY(IES):

NAME & ADDRESS

STATE OF INC.

LIABILITY LIMIT

Corporate Seal

SIGNATURE(S)

1. ________________________________

NAMES & TITLES (Typed)

1. ________________________________

2. ________________________________
**Federal Acquisition Regulation**

**53.301-25**

<table>
<thead>
<tr>
<th>CORPORATE SURETY(IES)</th>
<th>NAME &amp; ADDRESS</th>
<th>STATE OF INC.</th>
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**INSTRUCTIONS**

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated “Principal” on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury’s list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed “CORPORATE SURETY(IES).” In the space designated “SURETY(IES):” on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 2B) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seal. Individuals shall execute the bond opposite the word “Corporate Seal,” and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.
53.301–25–A  Payment Bond.

PAYMENT BOND
(See instructions on reverse)

DATE BOND EXECUTED: (Must be same or later than date of contract)

OMB No.: 9000-0046

Public reporting burden for the collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Federal Acquisition Regulations Division, Room 4023, 400 Seventh Street SW., Washington, DC 20405.

PRINCIPAL (legal name and business address)

<table>
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<tr>
<th>TYPE OF ORGANIZATION</th>
<th>A: and</th>
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<tr>
<td>INDIVIDUAL</td>
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<tr>
<td>PARTNERSHIP</td>
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<td>JOINT VENTURE</td>
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<td>CORPORATION</td>
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STATE OF INCORPORATION

SURETY(IES) (legal name and business address)

PENAL SUM OF BOND

<table>
<thead>
<tr>
<th>MILLION(S)</th>
<th>THOUSAND(S)</th>
<th>HUNDRED(S)</th>
<th>CENT(S)</th>
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CONTRACT DATE

CONTRACT NO.

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

PRINCIPAL

1. SIGNATURE(S)
   (Seal)

INDIVIDUAL SURETY(IES)

1. SIGNATURE(S)
   (Seal)

CORPORATE SURETY(IES)

1. SIGNATURE(S)
   (Seal)

STANDARD FORM 25A

Authorized for local reproduction

Previous edition is usable
Federal Acquisition Regulation

53.301–25–A

<table>
<thead>
<tr>
<th>CORPORATE SURETY(IES) (Continued)</th>
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INSTRUCTIONS

1. This form, for the protection of persons supplying labor and material, is used when a payment bond is required under the Act of August 24, 1935, 49 Stat. 793 (40 U.S.C. 270a-270e). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated “Principal” on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

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4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word “Corporate Seal,” and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

STANDARD FORM 25A (REV 10-98) BACK

[83 FR 70296, Dec. 18, 1998]
### CONTINUATION SHEET

(For Standard Forms 24, 25, and 25-A)

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<tr>
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<td>☐ BID</td>
<td>☐ CONTRACT</td>
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... (Table Continued)
### 53.301–26  Award/Contract

#### Award/Contract

**1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)**

**2. CONTRACT (Proc. Inst. Index) No.**

**3. EFFECTIVE DATE**

**4. PROCUREMENT REQUEST/PURCHASE ORDER NO.**

**5. ISSUED BY**

**6. ADMINISTERED BY (other than item 5)**

**7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, State and ZIP Code)**

**8. DELIVERY**

- [ ] FOB ORIGIN
- [ ] OTHER (See below)

**9. DISCOUNT FOR PROMPT PAYMENT**

**10. SUBMIT INVOICES (6 copies unless otherwise addressed to the address shown in**

**CODE**

**FACILITY CODE**

**11. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION**

- [ ] 10 U.S.C. 2304(a)(1)
- [ ] 41 U.S.C. 2550(a)

**15A. ITEM NO.**

**15B. SUPPLIES/SERVICES**

**15C. QUANTITY**

**15D. UNIT**

**15E. UNIT PRICE**

**15F. AMOUNT**

#### 16. TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>PART</th>
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<tbody>
<tr>
<td>A</td>
<td>SOLICITATION/CONTRACT FORM</td>
<td>I</td>
</tr>
<tr>
<td>B</td>
<td>SUPPLIES OR SERVICES AND PRICES/COSTS</td>
<td>I</td>
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<tr>
<td>C</td>
<td>PACKAGING AND MARKING</td>
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<td>D</td>
<td>INSPECTION AND ACCEPTANCE</td>
<td>J</td>
</tr>
<tr>
<td>E</td>
<td>CONTRACT ADMINISTRATION DATA</td>
<td>J</td>
</tr>
<tr>
<td>F</td>
<td>SPECIAL CONTRACT REQUIREMENTS</td>
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<td>G</td>
<td>CONTRACT CLAUSES</td>
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<td>LIST OF ATTACHMENTS</td>
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<td>J</td>
<td>REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OBLIGATIONS</td>
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<td>K</td>
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#### 17. CONTRACTOR'S NEGOTIATED AGREEMENT

(Contractor is required to sign this document and return copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the Federal Acquisition Regulation. Contractor shall comply with all applicable laws, regulations, and Executive orders, and shall furnish all necessary records and reports to the Government, including deliverables described herein. The contractor represents that all subcontractors are included in the contract and are qualified to perform the work required.

#### 18. AWARD

(Contractor is not required to sign this document.) Your offer on Solicitation Number includes all items or performance stated above and any additional or changes made by you which additions or changes are set forth in full above, as hereby accepted as to the terms listed above and on any continuation sheets. Inspection and certification of the work shall be made in accordance with terms and conditions of this contract. This award consummates the contract which consists of the following documents: (a) the Government’s solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

#### 19A. NAME AND TITLE OF SIGNED (Type or Print)

**BY**

(Signature of person authorized to sign)

#### 20A. NAME OF CONTRACTING OFFICER

**BY**

(Signature of Contracting Officer)

#### STANDARD FORM 26 (REV. 10/09)

Prepared by GSA - FAR (48 CFR 32.114a)

(73 FR 21785, Apr. 22, 2008)

---

434
Federal Acquisition Regulation

53.301–28 Affidavit of Individual Surety.

| OMB No.: | 9000-0001 |

---

**AFFIDAVIT OF INDIVIDUAL SURETY**

(See instructions on reverse)

---

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and representing the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regulatory Secretariat (FAA), Office of Acquisition Policy, U.S. Department of Transportation, Washington, DC 20590.

STATE OF

SS.

COUNTY OF

I, the undersigned, being duly sworn, depose and say that I am: (1) a citizen of the United States; (2) of full age and legally competent. I also depose and say that, concerning any stocks or bonds included in the assets listed below, there are no restrictions on the resale of these securities pursuant to the registration provisions of Section 6 of the Securities Act of 1933, 15 U.S.C. 77f. I further depose and say that I am not a U.S. government contractor and the making of a false, fictitious or fraudulent statement may render the maker subject to prosecution under Title 18, United States Code Sections 1001 and 494. This affidavit is made to induce the United States of America to accept me as surety on the attached bond.

1. NAME (First; Middle; Last) (Type or Print)

2. HOME ADDRESS (Number, Street, City, State, ZIP Code)

3. TYPE AND DURATION OF OCCUPATION

4. NAME AND ADDRESS OF EMPLOYER (If self-employed, so state)

5. NAME AND ADDRESS OF INDIVIDUAL SURETY BROKER USED (If any) (Type or Print)

6. TELEPHONE NUMBER

   HOME BUSINESS

7. THE FOLLOWING IS A TRUE REPRESENTATION OF THE ASSETS I HAVE PLEDGED TO THE UNITED STATES IN SUPPORT OF THE ATTACHED BOND:

   (a) Real estate (include a legal description, street address and other identifying description; the market value; attach supporting certified documents including recorded tax; evidence of title and the current tax assessment of the property. For market value approach, also provide a current appraisal.)

   (b) Assets other than real estate (describe the assets, the details of the escrow account, and attach certified evidence thereof).

8. IDENTIFY ALL MORTGAGES, LIENS, JUDGEMENTS, OR ANY OTHER ENCUMBRANCES INVOLVING SUBJECT ASSETS INCLUDING REAL ESTATE TAXES DUE AND PAYABLE

9. IDENTIFY ALL BONDS, INCLUDING BID GUARANTEES, FOR WHICH THE SUBJECT ASSETS HAVE BEEN PLEDGED WITHIN 3 YEARS PRIOR TO THE DATE OF EXECUTION OF THIS AFFIDAVIT.

---

**DOCUMENTATION OF THE PLEDGED ASSET MUST BE ATTACHED**

10. SIGNATURE

11. BOND AND CONTRACT TO WHICH THIS AFFIDAVIT RELATES (Where appropriate)

---

12. SUBSCRIBED AND SWEARED TO BEFORE ME AS FOLLOWS:

   a. DATE OATH ADMINISTERED
      MONTH       DAY       YEAR

   b. NAME AND TITLE OF OFFICIAL ADMINISTERING OATH
      (Type or print)

   c. SIGNATURE
      OR MY COMMISSION
      (Where appropriate)

---

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 28 (REV 4/2003)

Prepared by GSA-FAC (AB CPN 53.225B)

435
INSTRUCTIONS

1. Individual sureties on bonds executed in connection with Government contracts must complete and submit this form with the bond. (See 48 CFR 28.203, 53.228(a).) The surety must have the completed form notarized.

2. No corporation, partnership, or other unincorporated association or firm, as such, is acceptable as an individual surety. Likewise, members of a partnership are not acceptable as sureties on bonds that a partnership or an association, or any co-partner or member thereof, is the principal obligor. However, stockholders of corporate principals are acceptable provided (a) their qualifications are independent of their stockholdings or financial interest therein, and (b) that the fact is expressed in the affidavit of justification. An individual surety will not include any financial interest in assets connected with the principal on the bond that this affidavit supports.

3. United States citizenship is a requirement for individual sureties for contracts and bonds when the contract is awarded in the United States. However, when the Contracting Officer is located in an outlying area or a foreign country, the individual surety is only required to be a permanent resident of the area or country in which the contracting officer is located.

4. All signatures of the affidavit submitted must be originals. Affidavits bearing reproduced signatures are not acceptable. An authorized person must sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of a firm, partnership, or joint venture, or an officer of the corporation involved.
Federal Acquisition Regulation 53.301–30

53.301–30 Standard Form 30, Amendment of Solicitation/Modification of Contract.

<table>
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<td>4. REQUISITION/PURCHASE REQ. NO.</td>
<td></td>
<td></td>
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<tr>
<td>5. PROJECT NO. (If applicable)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. ISSUED BY</td>
<td>CODE</td>
<td></td>
</tr>
<tr>
<td>7. ADMINISTERED BY (If other than Item 6)</td>
<td>CODE</td>
<td></td>
</tr>
<tr>
<td>8. NAME AND ADDRESS OF CONTRACTOR (Inc., street, county, State and ZIP Code)</td>
<td></td>
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</tr>
<tr>
<td>9A. AMENDMENT OF SOLICITATION NO.</td>
<td></td>
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</tr>
<tr>
<td>9B. DATED (See Item 11)</td>
<td></td>
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<tr>
<td>9C. MODIFICATION OF CONTRACT/OFFER NO.</td>
<td></td>
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<tr>
<td>9D. DATED (See Item 11)</td>
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<tr>
<td>CODE</td>
<td>FACILITY CODE</td>
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</table>

10. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS  
☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
(a) by completing items 8 and 11 and returning ______ copies of the amendment; (b) by acknowledging receipt of this amendment on each copy of the offer submitted; or (c) by separate letter or telegram which includes a reference to the solicitation and amendment number. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If, by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

11. ACCOUNTING AND APPROPRIATION DATA (If required):

12. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/OFFERS, IT MODIFIES THE CONTRACT/OFFER NO. AS DESCRIBED IN ITEM 14.

☐ A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 16.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES such as changes in rating office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.600.

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:

D. OTHER (Specify type of modification and authority)

13. IMPORTANT: Contractor ☐ is not, ☐ is required to sign this document and return ______ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Specify by tabular headings, including solicitation/contract number and/or change number)

15A. NAME AND TITLE OF SIGNER (Type or print) 15B. CONTRACTOR/OFFEROR

15C. SIGNATURE DATE MAILED 15D. UNITED STATES OF AMERICA 15E. SIGNATURE DATE SIGNED

(Signature of person authorized to sign) (Signature of Contracting Officer)

NSN 7540-01-152-8578
PREVIOUS EDITION UNRELEASABLE

30-105 STANDARD FORM 30 (REV. 10-81)  
Prepared by DA  
FAR (48 CFR) 53.243  

437
INSTRUCTIONS

Instructions for items other than those that are self-explanatory, are as follows:

(a) Item 1 (Contract ID Code). Insert the contract type identification code that appears in the title block of the contract being modified.

(b) Item 3 (Effective date).

(1) For a solicitation amendment, change order, or administrative change, the effective date shall be the issue date of the amendments, change order, or administrative change.

(2) For a supplemental agreement, the effective date shall be the date agreed to by the contracting parties.

(3) For a modification issued as an initial or confirming notice of termination for the convenience of the Government, the effective date and the modification number of the confirming notice shall be the same as the effective date and modification number of the initial notice.

(4) For a modification converting a termination for default to a termination for the convenience of the Government, the effective date shall be the same as the effective date of the termination for default.

(5) For a modification confirming the contracting officer’s determination of the amount due in settlement of a contract termination, the effective date shall be the same as the effective date of the initial decision.

(c) Item 6 (Issued By). Insert the name and address of the issuing office. If applicable, insert the appropriate issuing office code in the code block.

(d) Item 8 (Name and Address of Contractor). For modifications to a contract or order, enter the contractor’s name, address, and code as shown in the original contract or order, unless changed by this or a previous modification.

(e) Items 9. (Amendment of Solicitation No.—Dated), and 10. (Modification of Contract/Order No.—Dated). Check the appropriate box and in the corresponding blanks insert the number and date of the original solicitation, contract, or order.

(f) Item 12 (Accounting and Appropriation Data). When appropriate, indicate the impact of the modification on each affected accounting classification by inserting one of the following entries:

(1) Accounting classification

Net increase $____________________

(2) Accounting classification

Net decrease $____________________

NOTE: If there are changes to multiple accounting classifications that cannot be placed in block 12, insert an asterisk and the words “See continuation sheet.”

(g) Item 13. Check the appropriate box to indicate the type of modification. Insert in the corresponding blank the authority under which the modification is issued. Check whether or not contractor must sign this document. (See FAR 43.103.)

(h) Item 14 (Description of Amendment/Modification).

(1) Organize amendments or modifications under the appropriate Uniform Contract Format (UCF) section headings from the applicable solicitation or contract. The UCF table of contents, however, shall not be set forth in this document.

(2) Indicate the impact of the modification on the overall total contract price by inserting one of the following entries:

(i) Total contract price increased by $________

(ii) Total contract price decreased by $________

(iii) Total contract price unchanged.

(3) State reason for modification.

(4) When removing, reinstating, or adding funds, identify the contract items and accounting classifications.

(B) When the SF 30 is used to reflect a determination by the contracting officer of the amount due in settlement of a contract terminated for the convenience of the Government, the entry in Item 14 of the modification may be limited to——

(i) A reference to the letter determination; and

(ii) A statement of the net amount determined to be due in settlement of the contract.

(6) Include subject matter or short title of solicitation/contract where feasible.

(i) Item 16B. The contracting officer’s signature is not required on solicitation amendments. The contracting officer’s signature is normally affixed last on supplemental agreements.
**Federal Acquisition Regulation**

**53.301–33  Solicitation, Offer and Award.**

<table>
<thead>
<tr>
<th>SOLICITATION, OFFER AND AWARD</th>
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<tbody>
<tr>
<td>2. CONTRACT NUMBER</td>
<td></td>
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<tr>
<td>3. SOLICITATION NUMBER</td>
<td></td>
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<tr>
<td>4. TYPE OF SOLICITATION</td>
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<tr>
<td>5. DATE ISSUED</td>
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<tr>
<td>6. REQUISITION/PURCHASE NUMBER</td>
<td></td>
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<tr>
<td>7. ISSUED BY CODE</td>
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<tr>
<td>8. ADDRESS OFFER TO</td>
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</tbody>
</table>

**NOTE:** In sealed bid solicitations "offer" and "offeree" mean "bid" and "bider".

**SOLICITATION**

5. Solicitations in original and additional copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handwritten, in the depositary located in until local time. Offers are subject to all terms and conditions as contained in this solicitation.

10. FOR INFORMATION CALL:

| A. NAME |  |
| B. TELEPHONE AND COLLECT CALL |  |
| C. E-MAIL ADDRESS |  |
| AREA CODE NUMBER EXT. |  |

**TABLE OF CONTENTS**

<table>
<thead>
<tr>
<th>SEC.</th>
<th>DESCRIPTION</th>
<th>PAGES</th>
<th>SEC.</th>
<th>DESCRIPTION</th>
<th>PAGES</th>
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<tr>
<td>A</td>
<td>SOLICITATION/CONTRACT FORM</td>
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<td>SUPPLIES OR SERVICES AND PROCESSES</td>
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<td>C</td>
<td>DESCRIPTIONS/SPECIFICATIONS, WORK STATEMENTS, AND OTHER ATTACHMENTS</td>
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<td>D</td>
<td>PACKAGING AND MARKING</td>
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<td>E</td>
<td>INSPECTION AND ACCEPTANCE</td>
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<td>F</td>
<td>DELIVERIES OR PERFORMANCE</td>
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<tr>
<td>G</td>
<td>CONTRACT ADMINISTRATION DATA</td>
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<td>H</td>
<td>SPECIAL CONTRACT REQUIREMENTS</td>
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</table>

**OFFER (Must be fully completed by offerer)**

**APPLICATION (Must be fully completed by offerer)**

12. In compliance with the above, the undersigned agrees, if the offer is accepted within calendar days (60 calendar days unless a different period is specified by the contract from the date of receipt of offer specified above, to furnish any or all items upon which a contract may be awarded at the price set opposite each item, delivered at the designated point(s), within the time specified in the solicitation.

13. DISCOUNT FOR PROMPT PAYMENT:

(See Section 1, Clause No. 52.204-8)

<table>
<thead>
<tr>
<th>AMENDMENT NO.</th>
<th>DATE</th>
<th>AMENDMENT NO.</th>
<th>DATE</th>
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</table>

14. ACKNOWLEDGMENT OF AMENDMENTS (The offer shall acknowledge receipt of amendments to the solicitation and related documents by entering check box below):

<table>
<thead>
<tr>
<th>CODE</th>
<th>FACILITY</th>
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</tbody>
</table>

15A. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.

15B. TELEPHONE NUMBER

| AREA CODE NUMBER EXT. |  |
|                      |  |

16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)

17. SIGNATURE

18. OFFER DATE

**AWARD**

19. ACCEPTED AS TO ITEMS NUMBERED

20. AMOUNT

21. ACCOUNTING AND APROPRIATION

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:

23. SUBMIT INVOICES TO ADDRESS SHOWN IN (if subject, unless otherwise specified)

24. PAYMENT WILL BE MADE BY CODE

25. NAME OF CONTRACTING OFFICER (Type or print)

26. UNITED STATES OF AMERICA

27. AWARD DATE

28. AMENDMENT NO.

**IMPORTANT:** Award shall be made on this Form, or on Standard Form 26, or by other authorized official written notice.

### ANNUAL BID BOND

**DATE BOND EXECUTED**

**FORM APPROVED ONE NO. 90000-0045**

**PRINCIPAL** Legal name and business address

**SURETY** Name, business address, and state of incorporation

**AGENCY TO WHICH BIDS ARE TO BE SUBMITTED**

**BIDS TO BE SUBMITTED DURING FISCAL YEARS ENDING**

---

**OBLIGATION**

We, the Principal and Surety(ies), are legally bound to the United States of America (hereafter called the Government) in the penal sum or sums that is / are / are sufficient to indemnify the Government in case of the default of the Principal as provided herein. For payment of the penal sum or sums, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

**CONDITIONS**

The Principal covenants, submitting bids from time to time during the fiscal year shown above to the department or agency named above for furnishing supplies or services to the Government. The Principal agrees that all of those bids submitted for opening during the fiscal year will be covered by a single bond instead of by a separate bond for each bid.

Therefore, the above obligation is void and of no effect if the Principal - (a) upon acceptance by the Government of any such bid within the period specified herein for acceptance (less 60 days) if no period is specified, executes the further contractual documents and gives the bonds or bond required by the terms of the bid as accepted within the time specified (110 days); if no period is specified after receipt of items by him, or (b) in the event of failure to execute the further contractual documents and give the bonds, pays the Government for any cost of acquiring the work which exceeds the amount of the bid.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

<table>
<thead>
<tr>
<th>SIGNATURES</th>
<th>PRINCIPAL</th>
<th>NAMES AND TITLES (Typed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>1.</td>
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<td>2.</td>
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<tr>
<td>3.</td>
<td>3.</td>
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</tr>
</tbody>
</table>

**INDIVIDUAL SURETIES**

| 1.          | 1.        |
| 2.          | 2.        |

**CORPORATE SURETY**

| 1.          | 1.        |
| 2.          | 2.        |

*AUTHORIZED FOR LOCAL REPRODUCTION: EXPIRATION DATE 10-31-REvised 1-90*

PREVIOUS EDITION NOT VALID

STANDARD FORM 24

PREPARED BY GSA - FEB 40 CFR 52.22401

440
Federal Acquisition Regulation 53.301–34

INSTRUCTIONS

1. This form is authorized for use in the acquisition of supplies and services, excluding construction, in lieu of Standard Form 24 (Bid Bond). Any deviation from this form will require the written approval of the Administrator of Federal Services.

2. Insert the full legal name and business address of the Principal in the space designated “Principal” on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury’s list of approved sureties and must act within the limitations listed therein.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word “Corporate Seal,” and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Tape the name and title of each person signing this bond in the space provided.

6. In its application to negotiated contracts, the terms “bid” and “bidder” shall include “proposal” and “offeror.”

[55 FR 25543, June 21, 1990]
53.301–35 Annual Performance Bond.

<table>
<thead>
<tr>
<th>ANNUAL PERFORMANCE BOND</th>
<th>DATE BOND EXECUTED</th>
<th>FORM APPROVED (OCS NO.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Give instructions on reverse)</td>
<td></td>
<td>9009–0045</td>
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</tbody>
</table>

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Make comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503.

Principal: firm name and business address

Substituted: names, business address, and state of incorporation

Penal sum of bond

Million(s)

Thousand(s)

Hundred(s)

Dime(s)

State of incorporation

Fiscal year ending

Agency representing the government

OBLIGATION:

We, the principal and surety(s), do hereby bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, to the United States of America (hereinafter called the Government) in the above penal sum. For the payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

CONDITIONS:

The principal covenants entering into contracts, from time to time during the fiscal year, above, with the Government department or agency shown above, for furnishing supplies or services to the government. The principal desires that all of these contracts be covered by one bond instead of by separate performance bond for each contract.

Therefore:

The above obligation is void if the principal — (a) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all of those contracts entered into during the original term and any extensions granted by the Government; with or without notice to the surety(ies) and during the life of any guaranty required under the contracts; and (b) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of those contracts, that subsequently are made, notice of those modifications to the surety(ies) is waived.

WITNESS:

The principal and surety(ies) executed this performance bond and affixed their seals on the above date.

SIGNATURES

PRINCIPAL

1. [Name]

   [Title]

   Corporate Seal

2. [Name]

   [Title]

   Corporate Seal

INDIVIDUAL SURETY

1. [Name]

   [Title]

CORPORATE SURETY

1. [Name]

   Corporate Seal

2.

AUTHORIZED FOR LOCAL REPRODUCTION

Expiration date: 12–31–92

STANDARD FORM 28

Prepared by GSA—FAX (410) 524-4300

Rev. 1-90
Federal Acquisition Regulation

53.301–35

INSTRUCTIONS

1. This form is authorized for use in the acquisition of supplies and services, excluding construction, in lieu of Standard Form 25 (Performance Bond). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated “Principal” on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if the representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury’s list of approved sureties and must act within the limitation listed therein.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word “Corporate Seal” and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

6. In its application to negotiated contracts, the terms “bid” and “bidder” shall include “proposal” and “offeror.”

STANDARD FORM 35 REV: 7-90

[55 FR 25545, June 21, 1990]

U.S. GOVERNMENT

PURCHASE ORDER—INVOICE—VOUCHER

Anyone who finds this booklet, please notify:

OFFICE:

TELEPHONE NUMBER:
Federal Acquisition Regulation

INSTRUCTIONS
(This form is for official Government use only)

1. Filling in the Form
(a) All copies of the form must be legible. To insure legibility, indelible pencil or ball-point pen should be used. SELLER'S NAME AND ADDRESS MUST BE PRINTED.
(b) Items ordered will be individually listed. General descriptions such as "hardware" are not acceptable. Show discount terms.
(c) Enter only reference or other identifying description as shown in "PURPOSE." Also, enter proper government identification, if known.

2. Distribution of Copies
Copy No. 1 is to be used for the invoice or as an attachment on the commercial invoice.
Copy No. 2 is to be used for use as a record of the order.
Copy No. 3 is to be used for a record of the order, and
Copy No. 4—Retain on file, or otherwise instructed.

3. When Paying Cash for Goods or Services
(a) Enter the amount of cash paid and obtain the seller's signature in the space provided in the lower section of Copy No. 1. If seller prefers to provide a commercial cash receipt, attach it to Copy No. 1 and check the "paid in cash" block at the bottom of the form.
(b) Distribution of copies when payment is by cash is the same as described above, except that Copy No. 1 is retained by Government representative when cash payment is made. Copy No. 1 is used thereafter in accordance with agency instructions pertaining to handling receipts for cash payment.

U.S. GOVERNMENT
PURCHASE ORDER—INVOICE—VOUCHER

DATE OF ISSUE
GOODS

FURTHER DELIVERIES OR SERVICES TO NAME AND ADDRESS

DESCRIPTION OF GOODS OR SERVICES QUANTITY UNIT PRICE AMOUNT

SUBTOTAL AND SCHOOL GROSS

AGENCY NAME AND SCHOOL AGENCY

PURCHASE AND PAYMENT DATA

PURCHASER—To sign below for receipt and delivery of goods
RECEIVED BY

SELLER—Please read instructions on Copy 2

DATE

AMOUNT

RECEIVED

NO FURTHER INVOICE NEED BE SUBMITTED

PAYEE

INSTRUCTIONS

PAYEE

PAYEE

PAYEE

PAYEE

PAYEE

PAYEE

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## ORDER INVOICE VOUCHER

### PURCHASER
- **To sign below for over-the-counter delivery of items**

### SELLER
- **To sign below for on-line delivery of items**

**INSTRUCTIONS TO SELLER**

After satisfactory identification of the Government representative presenting this purchase order, verify the quantity, including any packing or handling instructions, by marking any shortage or discrepancy. If you would rather issue your own invoice, DO NOT SIGN THIS FORM, but attach a signed order form to the invoice for payment.

**SALLER'S COPY OF ORDER**

**ACCOUNTING COPY**

<table>
<thead>
<tr>
<th>Supplies or Services</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Amount</th>
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<tbody>
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**PURCHASE ORDER INVOICE VOUCHER**

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<tr>
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<th>Order No</th>
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<table>
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<tr>
<th>Agency Name and Duly Authorized</th>
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</table>

**PURCHASE AND INVOICE DATA**

**RECEIVED BY**

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<thead>
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<th>Date</th>
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**Purchased and Invoice Duly Authorized**

<table>
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<tr>
<th>Date</th>
<th>Signature</th>
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**RECEIVING REPORT**

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<td>1214</td>
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**TOTAL AMOUNT**

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**PAYMENT**

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<th>Amount</th>
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**INSTRUCTIONS TO SELLER**

After satisfactory identification of the Government representative presenting this purchase order, verify the quantity, including any packing or handling instructions, by marking any shortage or discrepancy. If you would rather issue your own invoice, DO NOT SIGN THIS FORM, but attach a signed order form to the invoice for payment.
Federal Acquisition Regulation

53.301–44

U.S. GOVERNMENT

PURCHASE ORDER—INVOICE—VOUCHER

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>ITEM DESCRIPTION</th>
<th>QUANTITY</th>
<th>UNIT PRICE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

RECORD OF PURCHASES

<table>
<thead>
<tr>
<th>ORDER NO</th>
<th>NAME OF CONTRACTOR</th>
<th>DATE OF PURCHASE</th>
<th>AMOUNT</th>
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<tbody>
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</tr>
</tbody>
</table>

PURCHASER—To sign below for receipt of delivery of items

SIGNED

DATE

SALER—Please read instructions on back

SIGNATURE

DATE

NO FURTHER INVOICE NEEDS BE SUBMITTED

INSTRUCTIONS FOR MAKING PAYMENT TO

SIGNED

DATE

MEMORANDUM COPY (Optional Use)
53.301–120  Standard Form 120, Report of Excess Personal Property.

<table>
<thead>
<tr>
<th>1. REPORT NO.</th>
<th>2. DATE MAILED</th>
<th>3. TOTAL COST</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

4. TYPE OF REPORT
   a. ORIGINAL
   b. CORRECTED
   c. TOTAL W/D
   d. OVERSEAS
   e. CONTRACTORS INV

5. TO (Name and Address of Agency to which report is made)

6. APPEAL, OR FUND TO BE REIMBURSED (if any)

7. FROM (Name and Address of Reporting Agency)

8. FOR FURTHER INFORMATION CONTACT (Title, Address and Telephone No.)

9. AGENCY APPROVAL (if applicable)

10. SSA CONTROL NO.

<table>
<thead>
<tr>
<th>11. LOCATION OF PROPERTY (if location is to be abandoned give date)</th>
</tr>
</thead>
<tbody>
<tr>
<td>12. AGENCY CONTROL NO.</td>
</tr>
<tr>
<td>13. SURPLUS/release DATE</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>NUMBER OF UNITS</th>
<th>ACQUISITION COST</th>
<th>FAIR VALUE</th>
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<tbody>
<tr>
<td>(x)</td>
<td>(n)</td>
<td>(d)</td>
<td>(i)</td>
<td>(f)</td>
<td>(g)</td>
</tr>
</tbody>
</table>

STANDARD FORM 120 REV.
APRIL, 1997 EDITION

448

<table>
<thead>
<tr>
<th>ITEM NO. (a)</th>
<th>DESCRIPTION (b)</th>
<th>COND. (c)</th>
<th>UNIT (d)</th>
<th>NUMBER OF UNITS (e)</th>
<th>ACQUISITION COST (f)</th>
<th>TOTAL (g)</th>
<th>FAIR VALUE % (h)</th>
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</tr>
</tbody>
</table>
# Standard Form 126, Report of Personal Property for Sale

## Report of Personal Property for Sale

<table>
<thead>
<tr>
<th>Item</th>
<th>Item No. Assigned by GSA</th>
<th>Commercial Description and Condition</th>
<th>Unit No. of Units</th>
<th>Acquisition Cost Per Unit Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
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<td>6.</td>
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<tr>
<td>7.</td>
<td>General Services Administration</td>
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<td>8.</td>
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<td>9.</td>
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<td>10.</td>
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<td>11.</td>
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<td>17.</td>
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<tr>
<td>18.</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

For GSA Internal Use Only

- Sale No.:
- Type of Sale:
- Inspection Dates:
- GSA Opening Date and Time:

**Standard Form 126 (Rev. 10-01) Prepared by GSA, Acquisition Div. 48-320**

450
Federal Acquisition Regulation

53.301–126–A


<table>
<thead>
<tr>
<th>ITEM NO. ASSIGNED BY NSA</th>
<th>COMMERCIAL DESCRIPTION AND CONDITION</th>
<th>UNIT</th>
<th>NUMBER OF UNITS</th>
<th>ACQUISITION COST</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

Page 1 of 1
<table>
<thead>
<tr>
<th>ARCHITECT-ENGINEER CONTRACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. CONTRACT NO. ___________________</td>
</tr>
<tr>
<td>2. DATE OF CONTRACT ___________________</td>
</tr>
<tr>
<td>3A. NAME OF ARCHITECT-ENGINEER ___________________</td>
</tr>
<tr>
<td>3B. TELEPHONE NO. (Include Area Code) ___________________</td>
</tr>
<tr>
<td>3C. ADDRESS OF ARCHITECT-ENGINEER (Include ZIP Code) ___________________</td>
</tr>
<tr>
<td>4. DEPARTMENT OR AGENCY AND ADDRESS (Include ZIP Code) ___________________</td>
</tr>
<tr>
<td>5. PROJECT TITLE AND LOCATION ___________________</td>
</tr>
<tr>
<td>6. CONTRACT FOR (General description of services to be provided) ___________________</td>
</tr>
<tr>
<td>7. CONTRACT AMOUNT (Express in words and figures) ___________________</td>
</tr>
<tr>
<td>8. NEGOTIATION AUTHORITY ___________________</td>
</tr>
<tr>
<td>9. ADMINISTRATIVE, APPROPRIATION, AND ACCOUNTING DATA ___________________</td>
</tr>
</tbody>
</table>
Federal Acquisition Regulation 53.301–252

10. The United States of America (called the Government) represented by the Contracting Officer executing this contract, and the Architect-Engineer agree to perform this contract in strict accordance with the clauses and the documents identified as follows, all of which are made a part of this contract:

<table>
<thead>
<tr>
<th>SIGNATURES</th>
<th>NAMES AND TITLES (Printed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td></td>
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<tr>
<td>B</td>
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<tr>
<td>C</td>
<td></td>
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<tr>
<td>D</td>
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</tr>
</tbody>
</table>

If the parties to this contract are comprised of more than one legal entity, each entity shall be jointly and severally liable under this contract.

The parties hereto have executed this contract as of the date recorded in Item 2.

11. ARCHITECT-ENGINEER OR OTHER PROFESSIONAL SERVICES CONTRACTOR

12. THE UNITED STATES OF AMERICA

Contracting Officer

STANDARD FORM 252 BACK (REV. 10/83)
# 53.301–273 Reinsurance Agreement for a Miller Act Performance Bond

**REINSURANCE AGREEMENT FOR A MILLER ACT PERFORMANCE BOND**

<table>
<thead>
<tr>
<th>(See instructions on reverse)</th>
<th>OMB No.: 9000-0045</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. DIRECT WRITING COMPANY</strong></td>
<td><strong>1A. DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT</strong></td>
</tr>
<tr>
<td><strong>2. REINSURING COMPANY</strong></td>
<td><strong>2A. AMOUNT OF THIS REINSURANCE (IN) 2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT 2C. STATE OF INCORPORATION</strong></td>
</tr>
<tr>
<td></td>
<td><strong>3. DESCRIPTION OF CONTRACT</strong> 3A. AMOUNT OF CONTRACT 3B. CONTRACT DATE 3C. CONTRACT NO.**</td>
</tr>
<tr>
<td></td>
<td><strong>4. DESCRIPTION OF BOND</strong> 4A. PENAL SUM OF BOND 4B. DATE OF BOND 4C. BOND NO.**</td>
</tr>
<tr>
<td></td>
<td><strong>5. DESCRIPTION OF CONTRACT</strong> 5D. DESCRIPTION OF CONTRACT**</td>
</tr>
<tr>
<td></td>
<td><strong>6. CONTRACTING AGENCY</strong> 6A. PRINCIPAL**</td>
</tr>
<tr>
<td></td>
<td><strong>6B. STATE OF INCORPORATION OF Corporate Principal</strong></td>
</tr>
</tbody>
</table>

**AGREEMENT:**

(a) The Direct Writing Company named above is bound as surety to the United States of America on the performance bond described above, wherein the surety described in this paragraph, for the protection of the United States on the contracts described above. The contract is for the construction, alteration, or repair of a public building or public work of the United States and the performance bond was furnished to the United States under the Act of August 24, 1935, as amended (50 U.S.C. 270a-2(b)), known as the Miller Act. The Direct Writing Company has applied to the Reinsurance Company for the reinsurance of the performance bond in the amount listed above, and thef Reinsurance Company has agreed to pay, at the request of the United States, the amount of the performance bond as the "Amount of this Reinsurance," and in the case of any loss or damage is made by the United States, the Reinsurance Company is indebted to the United States for the amount so paid at the request of the United States, and the United States is indebted to the Reinsurance Company for the "Amount of this Reinsurance." If the amount of the performance bond is reduced, or the full amount thereof is not paid by the Reinsurance Company as required under the Act of August 24, 1935, as amended (50 U.S.C. 270a-2(b)), the United States is indebted to the Reinsurance Company for the full amount thereof, as required under the Act of August 24, 1935, as amended (50 U.S.C. 270a-2(b)).

(b) For a sum mutually agreed upon, paid by the Direct Writing Company to the Reinsuring Company which acknowledges receipt, the parties to the Agreement covenant and agree to the terms and conditions of this Agreement.

**TERMS AND CONDITIONS:**

(a) The purpose and intent of this agreement is to guarantee and indemnify the United States against loss under the performance bond and to the extent of the "Amount of this Reinsurance," of any sum less than the "Amount of this Reinsurance" that is owing and unpaid by the Direct Writing Company under the performance bond.

(b) If the Direct Writing Company fails to pay any default under the performance bond equal to or in excess of the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States, the amount of the performance bond as the "Amount of this Reinsurance," if the amount of the performance bond is reduced, or the full amount thereof is not paid by the Reinsurance Company as required under the Act of August 24, 1935, as amended (50 U.S.C. 270a-2(b)), and the United States is indebted to the Reinsurance Company for the full amount thereof, as required under the Act of August 24, 1935, as amended (50 U.S.C. 270a-2(b)).

(c) If there is a default on the performance bond for the "Amount of this Reinsurance," or more, the Reinsuring Company and the Direct Writing Company hereby covenant and agree that the United States may bring suit against the Reinsuring Company for the "Amount of this Reinsurance." If the case the amount of the default is for less than the "Amount of this Reinsurance," for the full amount of the default.

**WITNESS:**

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals to offices possessing power to sign this instrument, and to be duly attested by officers empowered thereto, on the day and year above written opposite their respective names.
Federal Acquisition Regulation

53.301–273

5. DIRECT WRITING COMPANY

SIGNED: SIGNATURE

ATTEST: SIGNATURE

NAME AND TITLE (Type)

6. REINSURING COMPANY

SIGNED: SIGNATURE

ATTEST: SIGNATURE

NAME AND TITLE (Type)

INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company’s underwriting limitation by reinsurance instead of co-insurance on Miller Act performance bonds running to the United States. See FAR (48 CFR) 28.202-1 and 53.228(h).

Execute and file this form as follows:

Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One carbon copy, signed and sealed, shall accompany the Direct Writing Company’s quarterly Schedule of Excess Risks filed with the Department of the Treasury.

Other copies may be prepared for the use of the Direct Writing Company and Reinsuring Company. Each Reinsuring Company should use a separate form.

[63 FR 58603, Oct. 30, 1998]
# Reinsurance Agreement for a Miller Act Payment Bond

## REINSURANCE AGREEMENT FOR A MILLER ACT PAYMENT BOND

(See instruction on reverse)

<table>
<thead>
<tr>
<th>OMB No.: 9000-0045</th>
</tr>
</thead>
</table>

### 1. DIRECT WRITING COMPANY**

<table>
<thead>
<tr>
<th>1A. DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1B. STATE OF INCORPORATION</td>
</tr>
</tbody>
</table>

### 2. REINSURING COMPANY**

<table>
<thead>
<tr>
<th>2A. AMOUNT OF THIS REINSURANCE</th>
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<tbody>
<tr>
<td>2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT</td>
</tr>
<tr>
<td>2C. STATE OF INCORPORATION</td>
</tr>
</tbody>
</table>

### 3. DESCRIPTION OF CONTRACT

<table>
<thead>
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<th>3A. AMOUNT OF CONTRACT</th>
</tr>
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<tbody>
<tr>
<td>3B. CONTRACT DATE</td>
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<tr>
<td>3C. CONTRACT NO.</td>
</tr>
<tr>
<td>3D. DESCRIPTION OF CONTRACT</td>
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</table>

### 4. DESCRIPTION OF BOND

<table>
<thead>
<tr>
<th>4A. PENAL SUM OF BOND</th>
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<tbody>
<tr>
<td>4B. DATE OF BOND</td>
</tr>
<tr>
<td>4C. BOND NO.</td>
</tr>
<tr>
<td>4D. PRINCIPAL*</td>
</tr>
<tr>
<td>4E. STATE OF INCORPORATION OF Corporate Principal</td>
</tr>
</tbody>
</table>

## AGREEMENT:

1. The Direct Writing Company named above is bound as a surety on the payment bond described above, wherein the above described is the principal, for the protection of all persons supplying labor and material on the contract described above, which is for the construction, alteration, or repair of a public building or public work of the United States. The payment bond is for the use of persons supplying labor or material, and is furnished to the United States under the Act of August 24, 1935, as amended 40 U.S.C. 2704-2706, known as the Miller Act. The Direct Writing Company has applied to the Reinsuring Company named above to be reinsured and counter-secured in the amount above opposite the name of the Reinsuring Company (referred to as "Amount of this Reinsurance"); or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under or by virtue of the payment bond.

2. For a sum mutually agreed upon, paid by the Direct Writing Company to the Reinsuring Company which acknowledges its receipt, the parties to this Agreement covenant and agree to the terms and conditions of this agreement.

### TERMS AND CONDITIONS:

The purpose and intent of this agreement is (a) to guarantee and indemnify the persons who have furnished or supplied labor or material in the prosecution of the work provided for in the contract referred to above (hereinafter referred to as "laborers and materialmen," the term "materialmen" including persons having a direct contractual relation with a subcontractor but no contractual relationship expressed or implied with the contractor who has furnished the said payment bond against loss under the payment bond to the extent of the "Amount of this Reinsurance," for any sum less than the "Amount of this Reinsurance," that is owing and unpaid by the Direct Writing Company to the laborers and materialmen on the payment bond; and (b) to make the laborers and materialmen obliges under this Reinsurance Agreement to the same extent as if their respective names were written herein.

**Therefore:**

1. The Reinsuring Company covenants and agrees:

   a. To pay the "Amount of this Reinsurance" to the "laborers and materialmen" in the event of the Direct Writing Company's failure to pay to the "laborers and materialmen" any default under the payment bond equal to or in excess of the "Amount of this Reinsurance"; and

   b. To pay (1) the full amount to the "laborers and materialmen," or (2) the amount not paid to them by the Direct Writing Company; in case the Direct Writing Company fails to pay the "laborers and materialmen" any default under the payment bond less than the "Amount of this Reinsurance;

*Items 1, 2, 4D: Furnish legal name, business address and DP Code*
Federal Acquisition Regulation

53.301–274

2. The Reinsuring Company and the Direct Writing Company covenant and agree that, in the case of default on the payment bond for the "Amount of this Reinsurance," or more, the persons given a "right of action" or a "right to sue" on the payment bond by section 25a of the Miller Act (40 U.S.C. 270a) may bring suit against the Reinsuring Company in the United States District Court for the district in which the contract described above is to be performed. Nothing in this subparagraph shall be construed to limit the rights of any other party to bring suit against the Reinsuring Company, whether the full amount of the default may be. The Reinsuring Company further covenants and agrees to comply with all requirements necessary to give such court jurisdiction, and to consent to determination of matters arising under this Reinsurance Agreement in accordance with the law and practice of the court. It is expressly understood by the parties that the rights, powers, and privileges given in this paragraph to persons are in addition to or supplemental to or in accordance with other rights, powers, and privileges which they might have under the statutes of the United States, any States, or the other laws of either, and should not be construed as limitations.

3. The Reinsuring Company and the Direct Writing Company further covenant and agree that the Reinsuring Company designates the process agent, appointed by the Direct Writing Company in the district in which the contract is to be performed and executed, as an agent to accept service of process in any suit instituted on this Reinsurance Agreement, and that the process agent shall send, by registered mail, to the Reinsuring Company at its principal place of business shown above, a copy of the process.

4. The Reinsuring Company and the Direct Writing Company further covenant and agree that this Reinsurance Agreement is an integral part of the payment bond.

WITNESS:

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by officers possessing the power to sign this instrument, and to be duly attested to by officers empowered thereto, on the day and date in item 1A written opposite their respective names.

5. DIRECT WRITING COMPANY

<table>
<thead>
<tr>
<th>Signature</th>
<th>Attest Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name and Title</td>
<td>Name and Title</td>
</tr>
</tbody>
</table>

6. REINSURING COMPANY

<table>
<thead>
<tr>
<th>Signature</th>
<th>Attest Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name and Title</td>
<td>Name and Title</td>
</tr>
</tbody>
</table>

INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company’s underwriting limitation by reinsurance instead of co-insurance on Miller Act payment bonds running to the United States. See FAR (48 CFR) 28.202-1 and 53.228(i).

Execute and file this form as follows:

Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One carbon copy, signed and sealed, shall accompany the Direct Writing Company’s quarterly Schedule of Excess Risks filed with the Department of Treasury.

Other copies may be prepared for the use of the Direct Writing Company and Reinsuring Company. Each Reinsuring Company should use a separate form.

[63 FR 58605, Oct. 30, 1998]
REINSURANCE AGREEMENT IN FAVOR OF THE UNITED STATES

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>DIRECT WRITING COMPANY*</td>
</tr>
<tr>
<td>2.</td>
<td>REINSURING COMPANY*</td>
</tr>
<tr>
<td>3A.</td>
<td>AMOUNT OF THIS REINSURANCE ($)</td>
</tr>
<tr>
<td>4A.</td>
<td>DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT</td>
</tr>
<tr>
<td>6A.</td>
<td>STATE OF INCORPORATION</td>
</tr>
<tr>
<td>18A.</td>
<td>DATE REINSURING COMPANY EXECUTES THIS AGREEMENT</td>
</tr>
<tr>
<td>20A.</td>
<td>STATE OF INCORPORATION</td>
</tr>
</tbody>
</table>

**3. DESCRIPTION OF BOND**

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>5A.</td>
<td>AMOUNT OF BOND</td>
</tr>
<tr>
<td>24A.</td>
<td>DATE OF BOND</td>
</tr>
<tr>
<td>25A.</td>
<td>BOND NO.</td>
</tr>
<tr>
<td>26A.</td>
<td>STATE OF INCORPORATION OF Corporate Principal</td>
</tr>
</tbody>
</table>

**AGREEMENT:**

(a) The Direct Writing Company named above is bound as surety to the United States of America, on the bond described above, wherein the above-named is the principal. The bond is given for the protection of the United States and the Direct Writing Company has applied to the above Reinsuring Company to be reinsured and counter-secured in the amount shown opposite the name of the Reinsuring Company referred to as the "Amount of this Reinsurance," or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under by or virtue of the bond.

(b) For a sum mutually agreed upon, paid by the Direct Writing Company to the Reinsuring Company which acknowledges its receipt, the parties to this Agreement covenant and agree to the terms and conditions of this agreement.

**TERMS AND CONDITIONS:**

The purpose and intent of this agreement is to guarantee and indemnify the United States against loss under the bond to the extent of the "Amount of this Reinsurance," or for any less sum than the "Amount of this Reinsurance," that is owing and unpaid by the Direct Writing Company to the United States.

**THEREFORE:**

1. If the Direct Writing Company fails to pay any default under the bond equal to or in excess of the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States, the obligation on the bond, the "Amount of this Reinsurance." If the Direct Writing Company fails to pay to the United States any default for a sum less than the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States the full amount of the default, or so much thereof that is not paid to the United States by the Direct Writing Company.

2. The Reinsuring Company further covenants and agrees that in case of default on the bond for the "Amount of this Reinsurance," or more, the United States may sue the Reinsuring Company for the "Amount of this Reinsurance" or for the full amount of the default when the default is less than the "Amount of this Reinsurance."

**WITNESS**

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by officers possessing power to sign this instrument, and to be duly attested to by officers empowered thereto, on the day and date above — written opposite their respective names.

*See 1, 2, 36 - Furnish legal name, business address and ZIP Code.
Federal Acquisition Regulation

53.301–275

4. DIRECT WRITING COMPANY

4A. (1). SIGNATURE
4B. (1). NAME AND TITLE (Type in)

4A. (2). ATTEST: SIGNATURE
4B. (2). NAME AND TITLE (Type in)

Corporate
Seal

5. REINSURING COMPANY

5A. (1). SIGNATURE
5B. (1). NAME AND TITLE (Type in)

5A. (2). ATTEST: SIGNATURE
5B. (2). NAME AND TITLE (Type in)

Corporate
Seal

INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company's underwriting limitation by reinsurance instead of co-insurance on bonds running to the United States except Miller Act Performance and Payment Bonds. See FAR (48 CFR) 28.202-1 and 53.228(i) and 31 CFR 233.11(b)(1). If this form is used to reinsure a bid bond, the "Penal Sum of Bond" and "Amount of this Reinsurance" may be expressed as percentage of the bid provided the actual amounts will not exceed the companies’ respective underwriting limitations.

Execute and file this form as follows:

Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One carbon copy, signed and sealed, shall accompany the Direct Writing Company’s quarterly Schedule of Excess Risks filed with the Department of Treasury.

Other copies may be prepared for the use of the Direct Writing Company and Reinsuring Company. Each Reinsuring Company should use a separate form.

[63 FR 70302, Dec. 18, 1998]
**53.301–298 Standard Form 298, Report Documentation Page.**

<table>
<thead>
<tr>
<th>4. TITLE AND SUBTITLE</th>
<th>5. FUNDING NUMBERS</th>
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<th>12b. DISTRIBUTION CODE</th>
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<table>
<thead>
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<th>13. ABSTRACT (Maximum 200 words)</th>
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<th>14. SUBJECT TERMS</th>
<th>15. NUMBER OF PAGES</th>
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<thead>
<tr>
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<th>17. SECURITY CLASSIFICATION OF REPORT</th>
<th>18. SECURITY CLASSIFICATION OF THIS PAGE</th>
<th>19. SECURITY CLASSIFICATION OF ABSTRACT</th>
<th>20. LIMITATION OF ABSTRACT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

**Note:** Standard Form 298 (Rev. 2-99) 270-00 to 298-96.
GENERAL INSTRUCTIONS FOR COMPLETING SF 298

The Report Documentation Page (RDP) is used in announcing and cataloging reports. It is important that this information be consistent with the rest of the report, particularly the cover and title page. Instructions for filling in each block of the form follow. It is important to stay within the lines to meet optical scanning requirements.

Block 1. Agency Use Only (Leave blank)

Block 2. Report Date. Full publication date including day, month, and year, if available (e.g. 21 Jun 88). Must cite at least the year.

Block 3. Type of Report and Dates Covered. If report is interim, final, etc. if applicable, enter inclusive report dates (e.g. 10 Jun 87 - 30 Jun 88).

Block 4. Title and Subtitle. A title is taken from the part of the report that provides the most meaningful and complete information. When a report is prepared in more than one volume, repeat the primary title, add volume number, and include subtitle for the specific volume. On classified documents enter the title classification in parentheses.

Block 5. Funding Numbers. To include contract and grant numbers; may include program element number(s), project number(s), task number(s), and work unit number(s). Use the following labels:

- C Contract
- G Grant
- PE Program
- P Project
- TA Task
- WU Work Unit Accession No.

Block 6. Author(s). Name(s) of person(s) responsible for writing the report, performing the research, or credited with the content of the report. If editor or compiler, this should follow the name(s).

Block 7. Performing Organization Name(s) and Address(es). Self-explanatory.

Block 8. Performing Organization Report Number. Enter the unique alphanumeric report number(s) assigned by the organization performing the report.

Block 9. Sponsoring/Monitoring Agency Name(s) and Address(es). Self-explanatory.

Block 10. Sponsoring/Monitoring Agency Report Number. (If known)

Block 11. Supplementary Notes. Enter information not included elsewhere such as: Prepared in cooperation with...; Trans. of...; To be published... When a report is revised, include a statement whether the new report supersedes or supplements the older report.

Block 12a. Distribution/Availability Statement. Denotes public availability or limitations. Cite any availability to the public. Enter additional limitations or special markings in all capitals (e.g. NOFORN, REL, ITAR).

- DOD - See DoD 5210.24, "Distribution Statements on Technical Documents."
- DOE - See authorities.
- NASA - See Handbook NHB 2200.2
- NTIS - Leave blank.

Block 12b. Distribution Code.

- DOD - Leave blank.
- DOE - Enter DOE distribution categories from the Standard Distribution for Unclassified Scientific and Technical Reports.
- NASA - Leave blank.
- NTIS - Leave blank.

Block 13. Abstract. Include a brief (Maximum 200 words/actual summary of the most significant information contained in the report.

Block 14. Subject Terms. Keywords or phrases identifying major subjects in the report.

Block 15. Number of Pages. Enter the total number of pages.

Block 16. Price Code. Enter appropriate price code (NTIS only).


Block 20. Limitation of Abstract. This block must be completed to assign a limitation to the abstract. Enter either UL (unlimited) or SAR (same as report). An entry in this block is necessary if the abstract is to be limited. If blank, the abstract is assumed to be unlimited.

Standard Form 298 Back (Rev. 2-89)

[55 FR 3890, Feb. 5, 1990]
53.301–308 Standard Form 308, Request for Determination and Response to Request.

[55 FR 38519, Sept. 18, 1990]
Federal Acquisition Regulation 53.301–330


<table>
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<th>OMB No.: 9000–0157</th>
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**PURPOSE**

Federal agencies use this form to obtain information from architect-engineer (A-E) firms about their professional qualifications. Federal agencies select firms for A-E contracts on the basis of professional qualifications as required by the Brooks A-E Act (40 U.S.C. 1101–1104) and Part 36 of the Federal Acquisition Regulation (FAR).

The Brooks A-E Act requires the public announcement of requirements for A-E services (with some exceptions provided by other statutes), and the selection of at least three of the most highly qualified firms based on demonstrated competence and professional qualifications according to specific criteria published in the announcement. The Act then requires the negotiation of a contract at a fair and reasonable price starting first with the most highly qualified firm.

The information used to evaluate firms is from this form and other sources, including performance evaluations, any additional data requested by the agency, and interviews with the most highly qualified firms and their references.

**GENERAL INSTRUCTIONS**

Part I presents the qualifications for a specific contract.

Part II presents the general qualifications of a firm or a specific branch office of a firm. Part II has two uses:

1. An A-E firm may submit Part II to the appropriate central, regional or local office of each Federal agency to be kept on file. A public announcement is not required for certain contracts, and agencies may use Part II as a basis for selecting at least three of the most highly qualified firms for discussions prior to requesting submission of Part I. Firms are encouraged to update Part II on file with agency offices, as appropriate, according to FAR Part 36. If a firm has branch offices, submit a separate Part II for each branch office seeking work.

2. Prepare a separate Part II for each firm that will be part of the team proposed for a specific contract and submitted with Part I. If a firm has branch offices, submit a separate Part II for each branch office that has a key role on the team.

**INDIVIDUAL AGENCY INSTRUCTIONS**

Individual agencies may supplement these instructions. For example, they may limit the number of projects or number of pages submitted in Part I in response to a public announcement for a particular project. Carefully comply with any agency instructions when preparing and submitting this form. Be as concise as possible and provide only the information requested by the agency.

**DEFINITIONS**

Architect-Engineer Services: Defined in FAR 2.101.

Branch Office: A geographically distinct place of business or subsidiary office of a firm that has a key role on the team.

Discipline: Primary technical capabilities of key personnel, as evidenced by academic degree, professional registration, certification, and/or extensive experience.

Firm: Defined in FAR 36.102.

Key Personnel: Individuals who will have major contract responsibilities and/or provide unusual or unique expertise.

**SPECIFIC INSTRUCTIONS**

Part I - Contract-Specific Qualifications

Section A. Contract Information.

1. Title and Location. Enter the title and location of the contract for which this form is being submitted, exactly as shown in the public announcement or agency request.

2. Public Notice Date. Enter the date of the agency’s public announcement or agency request for this contract.

3. Solicitation or Project Number. Enter the solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request for this contract.

Section B. Architect-Engineer Point of Contact.

4-B. Name, Title, Name of Firm, Telephone Number, Fax (Facsimile) Number and E-mail (Electronic Mail) Address. Provide information for a representative of the prime contractor or joint venture that the agency can contact for additional information.
Section C. Proposed Team.

9.11. Firm Name, Address, and Role in This Contract. Provide the contractual relationship, name, full mailing address, and a brief description of the role of each firm that will be involved in performance of this contract. List the prime contractor or joint venture partners first. If a firm has branch offices, indicate each individual branch office that will have a key role on the team. The named subcontractors and outside associates or consultants must be used, and any change must be approved by the contracting officer. (See FAR Part 52 Clause "Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)"). Attach an additional sheet in the same format as Section C if needed.

Section D. Organizational Chart of Proposed Team.

As an attachment after Section C, present an organizational chart of the proposed team showing the names and roles of all key personnel listed in Section E and the firm they are associated with as listed in Section C.

Section E. Resumes of Key Personnel Proposed for This Contract.

Complete this section for each key person who will participate in this contract. Group by firm, with personnel of the prime contractor or joint venture partner firms first. The following blocks must be completed for each resume:


14. Years Experience. Total years of relevant experience (block 14a), and years of relevant experience with current firm, but not necessarily the same branch office (block 14b).

15. Firm Name and Location. Name, city and state of the firm where the person currently works, which must correspond with one of the firms (or branch office of a firm, if appropriate) listed in Section C.

16. Education. Provide information on the highest relevant academic degree(s) received. Indicate the area(s) of specialization for each degree.

17. Current Professional Registration. Provide information on current relevant professional registration(s) in a State or possession of the United States, Puerto Rico, or the District of Columbia according to FAR Part 36.

18. Other Professional Qualifications. Provide information on any other professional qualifications relating to this contract, such as education, professional registration, publications, organizational memberships, certifications, training, awards, and foreign language capabilities.

19. Relevant Projects. Provide information on up to five projects in which the person had a significant role that demonstrates the person’s capability relevant to his/her proposed role in this contract. These projects do not necessarily have to be any of the projects presented in Section F for the project team if the person was not involved in any of those projects or the person worked on other projects that were more relevant than the team projects in Section F. Use the check box provided to indicate if the project was performed with any office of the current firm. If any of the professional services or construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description and Specific Role (block 3).

Section F. Example Projects Which Best Illustrate Proposed Team’s Qualifications for This Contract.

Select projects where multiple team members worked together, if possible, that demonstrate the team’s capability to perform work similar to that required for this contract. Complete one Section F for each project. Present ten projects, unless otherwise specified by the agency. Complete the following blocks for each project:

20. Example Project Key Number. Start with "1" for the first project and number consecutively.

21. Title and Location. Title and location of project or contract. For an indefinite delivery contract, the location is the geographic scope of the contract.

22. Year Completed. Enter the year completed of the professional services (such as planning, engineering study, design, or surveying), and/or the year completed of the construction, if applicable. If any of the professional services or the construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description of Project and Relevance to This Contract (block 24).

23a. Project Owner. Project owner or user, such as a government agency or installation, an institution, a corporation or private individual.

23b. Point of Contact Name. Provide name of a person associated with the project owner or the organization which contracted for the professional services, who is very familiar with the project and the firm’s (or firms’) performance.

23c. Point of Contact Telephone Number. Self-explanatory.

24. Brief Description of Project and Relevance to This Contract. Indicate scope, size, cost, principal elements and special features of the project. Discuss the relevance of the example project to this contract. Enter any other information requested by the agency for each example project.
Federal Acquisition Regulation

53.301–330

26. Names of Key Personnel (From Section E, Block 12)  

27. Role in This Contract (From Section E, Block 13)  

28. Example Projects Listed in Section F (Fill in “Example Projects Key” section below first, before completing table. Place “X” under project key number for participation in same or similar role.)

<table>
<thead>
<tr>
<th>26. NAMES OF KEY PERSONNEL (From Section E, Block 12)</th>
<th>27. ROLE IN THIS CONTRACT (From Section E, Block 13)</th>
<th>28. EXAMPLE PROJECTS LISTED IN SECTION F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jane A. Smith</td>
<td>Chief Architect</td>
<td>X</td>
</tr>
<tr>
<td>Joseph B. Williams</td>
<td>Chief Mech. Engineer</td>
<td>X</td>
</tr>
<tr>
<td>Tara C. Donovan</td>
<td>Chief Elec. Engineer</td>
<td>X</td>
</tr>
</tbody>
</table>

29. Example Projects Key

<table>
<thead>
<tr>
<th>NO.</th>
<th>TITLE OF EXAMPLE PROJECT (FROM SECTION F)</th>
<th>NO.</th>
<th>TITLE OF EXAMPLE PROJECT (FROM SECTION F)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Federal Courthouse, Denver, CO</td>
<td>6</td>
<td>XYZ Corporation Headquarters, Boston, MA</td>
</tr>
<tr>
<td>2</td>
<td>Justin J. Wilson Federal Building, Baton Rouge, LA</td>
<td>7</td>
<td>Founder’s Museum, Newport RI</td>
</tr>
</tbody>
</table>

Section G. Key Personnel Participation in Example Projects.

This section is intended to graphically depict which key personnel identified in Section E worked on the example projects listed in Section F. Complete the following blocks (see example below).

26. and 27. Names of Key Personnel and Role in This Contract. List the names of the key personnel and their proposed roles in this contract in the same order as they appear in Section E.

28. Example Projects Listed in Section F. In the column under each project key number (see block 29) and for each key person, place an “X” under the project key number for participation in the same or similar role.

29. Example Projects Key. List the key numbers and titles of the example projects in the same order as they appear in Section F.

Section H. Additional Information.

30. Use this section to provide additional information specifically requested by the agency or to address selection criteria that are not covered by the information provided in Sections A–G.

Section I. Authorized Representative.

31. and 32. Signature of Authorized Representative and Date. An authorized representative of a joint venture or the prime contractor must sign and date the completed form. Signing attests that the information provided is current and factual, and that all firms on the proposed team agree to work on the project. Joint ventures selected for negotiations must make available a statement of participation by a principal of each member of the joint venture.

33. Name and Title. Self-explanatory.

SAMPLE ENTRIES FOR SECTION G (MATRIX)
Part II - General Qualifications

See the "General Instructions" on page 1 for firms with branch offices. Prepare Part II for the specific branch office seeking work if the firm has branch offices.

1. Solicitation Number. If Part II is submitted for a specific contract, insert the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request.

2a-2e. Firm (or Branch Office) Name and Address. Self-explanatory.

3. Year Established. Enter the year the firm (or branch office, if appropriate) was established under the current name.

4. DUNS Number. Insert the Data Universal Numbering System number issued by Dun and Bradstreet Information Services. Firms must have a DUNS number. See FAR Part 4.6.

5. Ownership.
   a. Type. Enter the type of ownership or legal structure of the firm (sole proprietor, partnership, corporation, joint venture, etc.).
   b. Small Business Status. Refer to the North American Industry Classification System (NAICS) code in the public announcement, and indicate if the firm is a small business according to the current size standard for that NAICS code (for example, Engineering Services (part of NAICS 541330), Architectural Services (NAICS 541310), Surveying and Mapping Services (NAICS 541370)). The small business categories and the internet website for the NAICS codes appear in FAR Part 19. Contact the requesting agency for any questions regarding Business Status.

6a-6c. Point of Contact. Provide this information for a representative of the firm that the agency can contact for additional information. The representative must be empowered to speak on contractual and policy matters.

7. Name of Firm. Enter the name of the firm if Part II is prepared for a branch office.

8a-8c. Former Firm Names. Indicate any other previous names for the firm (or branch office) during the last six years. Insert the year that this corporate name change was effective and the associated DUNS Number. This information is used to review past performance on Federal contracts.

9. Employees by Discipline. Use the relevant disciplines and associated function codes shown at the end of these instructions and list in the same numerical order. After the listed disciplines, write in any additional disciplines and leave the function code blank. List no more than 20 disciplines. Group remaining employees under "Other Employees" in column b. Each person can be counted only once according to his/her primary function. If Part II is prepared for a firm (including all branch offices), enter the number of employees by disciplines in column c(1). If Part II is prepared for a branch office, enter the number of employees by discipline in column c(2) and for the firm in column c(1).

10. Profile of Firm's Experience and Annual Average Revenue for Last 5 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the experience categories which most accurately reflect the firm's technical capabilities and project experience. Use the relevant experience categories and associated profile codes shown at the end of these instructions, and list in the same numerical order. After the listed experience categories, write in any unlisted relevant project experience categories and leave the profile codes blank. For each type of experience, enter the appropriate revenue index number to reflect the professional services revenues received annually (averaged over the last 5 years) by the firm or branch office for performing that type of work. A particular project may be identified with one experience category or it may be broken into components, as best reflects the capabilities and types of work performed by the firm. However, do not double count the revenues received on a particular project.

11. Annual Average Professional Services Revenues of Firm for Last 3 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the appropriate revenue index numbers to reflect the professional services revenues received annually (averaged over the last 3 years) by the firm or branch office. Indicate Federal work (performed directly for the Federal Government, either as the prime contractor or subcontractor), non-Federal work (all other domestic and foreign work, including Federally-assisted projects), and the total. If the firm has been in existence for less than 3 years, see the definition for "Annual Receipts" under FAR 19.101.

12. Authorized Representative. An authorized representative of the firm or branch office must sign and date the completed form. Signing attests that the information provided is current and factual. Provide the name and title of the authorized representative who signed the form.
## List of Disciplines (Function Codes)

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td>Acoustical Engineer</td>
<td>32</td>
<td>Hydraulic Engineer</td>
</tr>
<tr>
<td>02</td>
<td>Administrative</td>
<td>33</td>
<td>Hydrographic Surveyor</td>
</tr>
<tr>
<td>03</td>
<td>Aerial Photographer</td>
<td>34</td>
<td>Hydrologist</td>
</tr>
<tr>
<td>04</td>
<td>Aeronautical Engineer</td>
<td>35</td>
<td>Industrial Engineer</td>
</tr>
<tr>
<td>05</td>
<td>Archaeologist</td>
<td>36</td>
<td>Industrial Hygienist</td>
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<tr>
<td>06</td>
<td>Architect</td>
<td>37</td>
<td>Interior Designer</td>
</tr>
<tr>
<td>07</td>
<td>Biologist</td>
<td>38</td>
<td>Land Surveyor</td>
</tr>
<tr>
<td>08</td>
<td>CAD/CAM Technician</td>
<td>39</td>
<td>Landscape Architect</td>
</tr>
<tr>
<td>09</td>
<td>Cartographer</td>
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<td>Materials Engineer</td>
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<td>10</td>
<td>Chemical Engineer</td>
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<td>Materials Handling Engineer</td>
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<td>Chemist</td>
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<td>12</td>
<td>Civil Engineer</td>
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<td>Mining Engineer</td>
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<td>13</td>
<td>Communications Engineer</td>
<td>44</td>
<td>Oceanographer</td>
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<tr>
<td>14</td>
<td>Computer Programmer</td>
<td>45</td>
<td>Photo Interpreter</td>
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<tr>
<td>15</td>
<td>Construction Inspector</td>
<td>46</td>
<td>Photogrammetrist</td>
</tr>
<tr>
<td>16</td>
<td>Construction Manager</td>
<td>47</td>
<td>Planner: Urban/Regional</td>
</tr>
<tr>
<td>17</td>
<td>Corrosion Engineer</td>
<td>48</td>
<td>Project Manager</td>
</tr>
<tr>
<td>18</td>
<td>Cost Engineer/Estimator</td>
<td>49</td>
<td>Remote Sensing Specialist</td>
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<tr>
<td>19</td>
<td>Ecologist</td>
<td>50</td>
<td>Risk Assessor</td>
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<tr>
<td>20</td>
<td>Economist</td>
<td>51</td>
<td>Safety/Occupational Health Engineer</td>
</tr>
<tr>
<td>21</td>
<td>Electrical Engineer</td>
<td>52</td>
<td>Sanitary Engineer</td>
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<td>22</td>
<td>Electronics Engineer</td>
<td>53</td>
<td>Scheduler</td>
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<tr>
<td>23</td>
<td>Environmental Engineer</td>
<td>54</td>
<td>Security Specialist</td>
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<td>Environmental Scientist</td>
<td>55</td>
<td>Sees Engineer</td>
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<td>25</td>
<td>Fire Protection Engineer</td>
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<td>Specifications Writer</td>
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<tr>
<td>26</td>
<td>Forensic Engineer</td>
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<td>Structural Engineer</td>
</tr>
<tr>
<td>27</td>
<td>Foundation/Geotechnical Engineer</td>
<td>58</td>
<td>Technician/Analyst</td>
</tr>
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<td>28</td>
<td>Geodetic Surveyor</td>
<td>59</td>
<td>Toxicologist</td>
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<tr>
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<td>Geographic Information System Specialist</td>
<td>60</td>
<td>Transportation Engineer</td>
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<td>30</td>
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<td>61</td>
<td>Value Engineer</td>
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<tr>
<td>31</td>
<td>Health Facility Planner</td>
<td>62</td>
<td>Water Resources Engineer</td>
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<td>A01</td>
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<td>Agricultural Development; Grain Storage; Farm Mechanization</td>
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<td>Airports; Nav aids; Airport Lighting; Aircraft Fueling</td>
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<td>Automation; Controls; Instrumentation</td>
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<td>Digital Orthophotography</td>
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<td>Dining Halls, Clubs; Restaurants</td>
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<td>D08</td>
<td>Dredging Studies and Design</td>
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</table>

**List of Experience Categories (Profile Codes)**

- **Code E01**: Ecological & Archeological Investigations
- **Code E02**: Educational Facilities; Classrooms
- **Code E03**: Electrical Studies and Design
- **Code E04**: Electronics
- **Code E05**: Elevators; Escalators; People-Movers
- **Code E06**: Embassies and Consulates
- **Code E07**: Energy Conservation; New Energy Sources
- **Code E08**: Engineering Economics
- **Code E09**: Environmental Impact Studies, Assessments or Statements
- **Code E10**: Environmental and Natural Resource Mapping
- **Code E11**: Environmental Planning
- **Code E12**: Environmental Remediation
- **Code E13**: Environmental Testing and Analysis
- **Code F01**: Fallout Shelters; Blast-Resistant Design
- **Code F02**: Field Houses; Gyms; Stadiums
- **Code F03**: Fire Protection
- **Code F04**: Fishermen; Fish ladders
- **Code F05**: Forensic Engineering
- **Code F06**: Forestry & Forest products
- **Code G01**: Garages; Vehicle Maintenance Facilities; Parking Decks
- **Code G02**: Gas Systems (Propane; Natural, Etc.)
- **Code G03**: Geodetic Surveying; Ground and Airborne Services; Development, Analysis, and Data Collection
- **Code G04**: Geographic Information System
- **Code G05**: Geospatial Data Conversion; Scanning, Digitizing, Compilation, Attributing, Scribing, Drafting
- **Code G06**: Graphic Design
- **Code H01**: Harbors; Jetties; Piers, Ship Terminal Facilities
- **Code H02**: Hazardous Materials Handling and Storage
- **Code H03**: Hazardous, Toxic, Radiactive Waste Remediation
- **Code H04**: Heating; Ventilating; Air Conditioning
- **Code H05**: Health Systems Planning
- **Code H06**: Highrise; Air-Rights-Type Buildings
- **Code H07**: Highways; Streets; Airfield Paving; Parking Lots
- **Code H08**: Historical Preservation
- **Code H09**: Hospital & Medical Facilities
- **Code H10**: Hotels; Motels
- **Code H11**: Housing (Residential, Multi-Family; Apartments; Condominiums)
- **Code H12**: Hydraulics & Pneumatics
- **Code H13**: Hydrographic Surveying
### Federal Acquisition Regulation

**53.301-330**

#### List of Experience Categories (Profile Codes)

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<th>Description</th>
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<th>Description</th>
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<td>Industrial Buildings; Manufacturing Plants</td>
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<td>Product, Machine Equipment Design</td>
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<td>Industrial Processes; Quality Control</td>
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<td>Pneumatic Structures, Air-Support Buildings</td>
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<td>Industrial Waste Treatment</td>
<td>P12</td>
<td>Postal Facilities</td>
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<td>I04</td>
<td>Intelligent Transportation Systems</td>
<td>P13</td>
<td>Power Generation, Transmission, Distribution</td>
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<td>I05</td>
<td>Interior Design; Space Planning</td>
<td>P14</td>
<td>Public Safety Facilities</td>
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<td>I06</td>
<td>Irrigation; Drainage</td>
<td>R01</td>
<td>Radar; Sonar; Radio &amp; Radar Telescopes</td>
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<td>J01</td>
<td>Judicial and Courtroom Facilities</td>
<td>R02</td>
<td>Radio Frequency Systems &amp; Shieldings</td>
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<td>L01</td>
<td>Laboratories; Medical Research Facilities</td>
<td>R03</td>
<td>Railroad; Rapid Transit</td>
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<td>L02</td>
<td>Land Surveying</td>
<td>R04</td>
<td>Recreation Facilities (Parks, Marinas, Etc.)</td>
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<td>Landscape Architecture</td>
<td>R05</td>
<td>Refrigeration Plants/Systems</td>
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<td>L04</td>
<td>Libraries; Museums; Galleries</td>
<td>R06</td>
<td>Rehabilitation (Buildings; Structures; Facilities)</td>
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<td>Lighting (Interior; Display; Theater, Etc.)</td>
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<td>Remote Sensing</td>
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<td>Lighting (Exterior; Streets; Memorials, Athletic Fields, Etc.)</td>
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<td>Mapping Location/Addressing Systems</td>
<td>R09</td>
<td>Resources Recovery; Recycling</td>
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<td>M02</td>
<td>Materials Handling Systems; Conveyors; Sorters</td>
<td>R10</td>
<td>Risk Analysis</td>
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<td>M03</td>
<td>Metallurgy</td>
<td>R11</td>
<td>Rivers; Canals; Waterways; Flood Control</td>
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<td>M04</td>
<td>Microclimatology; Tropical Engineering</td>
<td>R12</td>
<td>Roofing</td>
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<td>M05</td>
<td>Military Design Standards</td>
<td>S01</td>
<td>Security Engineering; Accident Studies; OSHA Studies</td>
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<td>M06</td>
<td>Mining &amp; Mineralogy</td>
<td>S02</td>
<td>Security Systems; Intruder &amp; Smoke Detection</td>
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<td>M07</td>
<td>Missile Facilities (Stiro; Fuels; Transport)</td>
<td>S03</td>
<td>Seismic Designs &amp; Studies</td>
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<td>M08</td>
<td>Modular Systems Design; Pre-Fabricated Structures or Components</td>
<td>S04</td>
<td>Sewage Collection, Treatment and Disposal</td>
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<tr>
<td>N01</td>
<td>Naval Architecture; Off-Shore Platforms</td>
<td>S05</td>
<td>Soils &amp; Geologic Studies; Foundations</td>
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<td>N02</td>
<td>Navigation Structures; Locks</td>
<td>S06</td>
<td>Solar Energy Utilization</td>
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<td>N03</td>
<td>Nuclear Facilities; Nuclear Shielding</td>
<td>S07</td>
<td>Solid Wastes; Incineration; Landfills</td>
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<tr>
<td>O01</td>
<td>Office Buildings; Industrial Parks</td>
<td>S08</td>
<td>Special Environments; Clean Rooms, Etc.</td>
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<tr>
<td>O02</td>
<td>Oceanographic Engineering</td>
<td>S09</td>
<td>Structural Design; Special Structures</td>
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<td>O03</td>
<td>Ordnance; Munitions; Special Weapons</td>
<td>S10</td>
<td>Surveying; Plotting; Mapping; Flood Plate; Studies</td>
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<td>P01</td>
<td>Petroleum Exploration; Refining</td>
<td>S11</td>
<td>Sustainable Design</td>
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<td>P02</td>
<td>Petroleum and Fuel (Storage and Distribution)</td>
<td>S12</td>
<td>Swimming Pools</td>
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<td>P03</td>
<td>Photogrammetry</td>
<td>S13</td>
<td>Storm Water Handling &amp; Facilities</td>
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<tr>
<td>P04</td>
<td>Pipelines (Cross-Country - Liquid &amp; Gas)</td>
<td>T01</td>
<td>Telephone Systems (Rural; Mobile; Intercom, Etc.)</td>
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<td>P05</td>
<td>Planning (Community, Regional)</td>
<td>T02</td>
<td>Testing &amp; Inspection Services</td>
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<td>P06</td>
<td>Arnaiside and State</td>
<td>T03</td>
<td>Traffic &amp; Transportation Engineering</td>
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<tr>
<td>P07</td>
<td>Planning (Site, Installation, and Project)</td>
<td>T04</td>
<td>Topographic Surveying and Mapping</td>
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<tr>
<td>P08</td>
<td>Plumbing &amp; Piping Design</td>
<td>T05</td>
<td>Towers (Self-Supporting &amp; Guyed Systems)</td>
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<tr>
<td>P09</td>
<td>Prisons &amp; Correction Facilities</td>
<td>T06</td>
<td>Tunnels &amp; Subways</td>
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*STANDARD FORM 330 (1/2004) PAGE 7 OF INSTRUCTIONS*
### List of Experience Categories (Profile Codes)

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<td>Urban Renewals: Community Development</td>
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<td>U03</td>
<td>Utilities (Gas and Steam)</td>
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<td>V01</td>
<td>Value Analysis; Life-Cycle Costing</td>
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<tr>
<td>W01</td>
<td>Warehouses &amp; Depots</td>
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<tr>
<td>W02</td>
<td>Water Resources; Hydrology; Ground Water</td>
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<tr>
<td>W03</td>
<td>Water Supply; Treatment and Distribution</td>
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<tr>
<td>W04</td>
<td>Wind Tunnels; Research/Testing Facilities Design</td>
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<td>Z01</td>
<td>Zoning; Land Use Studies</td>
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### ARCHITECT - ENGINEER QUALIFICATIONS

#### PART I - CONTRACT-SPECIFIC QUALIFICATIONS

#### A. CONTRACT INFORMATION

1. **TITLE AND LOCATION** (City and State)

2. **PUBLIC NOTICE DATE**

3. **SOLICITATION OR PROJECT NUMBER**

#### B. ARCHITECT-ENGINEER POINT OF CONTACT

4. **NAME AND TITLE**

5. **NAME OF FIRM**

6. **TELEPHONE NUMBER**

7. **FAX NUMBER**

8. **E-MAIL ADDRESS**

#### C. PROPOSED TEAM

(Complete this section for the prime contractor and all key subcontractors.)

<table>
<thead>
<tr>
<th>(Check)</th>
<th>9. <strong>FIRM NAME</strong></th>
<th>10. <strong>ADDRESS</strong></th>
<th>11. <strong>ROLE IN THIS CONTRACT</strong></th>
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#### D. ORGANIZATIONAL CHART OF PROPOSED TEAM

(Attached)

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**Federal Acquisition Regulation 53.301-330**

**VerDate Nov<24>2008 09:58 Nov 04, 2009**

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471
### E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT

[Complete one Section F for each key person.]

<table>
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<tr>
<th>12. NAME</th>
<th>13. ROLE IN THIS CONTRACT</th>
<th>14. YEARS EXPERIENCE</th>
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### 19. RELEVANT PROJECTS

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**Brief Description:** Brief scope, size, cost, etc. AND SPECIFIC ROLE

- Check if project performed with current firm

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**Brief Description:** Brief scope, size, cost, etc. AND SPECIFIC ROLE

- Check if project performed with current firm

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**Brief Description:** Brief scope, size, cost, etc. AND SPECIFIC ROLE

- Check if project performed with current firm

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**Brief Description:** Brief scope, size, cost, etc. AND SPECIFIC ROLE

- Check if project performed with current firm

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**Brief Description:** Brief scope, size, cost, etc. AND SPECIFIC ROLE

- Check if project performed with current firm

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**Brief Description:** Brief scope, size, cost, etc. AND SPECIFIC ROLE

- Check if project performed with current firm
Federal Acquisition Regulation 53.301–330

F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM’S QUALIFICATIONS FOR THIS CONTRACT
(Present as many projects as requested by the agency, in 10 projects, if not specified. Complete one Section F for each project.)

<table>
<thead>
<tr>
<th>21. TITLE AND LOCATION (City and State)</th>
<th>22. YEAR COMPLETED</th>
<th>23. PROJECT OWNER’S INFORMATION</th>
<th>24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT (Include scope, size, and cost)</th>
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<tbody>
<tr>
<td>a. PROJECT OWNER</td>
<td>b. POINT OF CONTACT NAME</td>
<td>c. POINT OF CONTACT TELEPHONE NUMBER</td>
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25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT

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<td>e. FIRM LOCATION (City and State)</td>
<td>f. ROLE</td>
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<tr>
<td>f. FIRM NAME</td>
<td>g. FIRM LOCATION (City and State)</td>
<td>h. ROLE</td>
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</table>
G. KEY PERSONNEL PARTICIPATION IN EXAMPLE PROJECTS

26. NAMES OF KEY PERSONNEL
(From Section E, Block 12)

27. ROLE IN THIS CONTRACT
(From Section E, Block 13)

28. EXAMPLE PROJECTS LISTED IN SECTION F
(Fill in "Example Projects Key" section below before completing table. Place "X" under project key number for participation in same or similar role.)

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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

29. EXAMPLE PROJECTS KEY

<table>
<thead>
<tr>
<th>NO.</th>
<th>TITLE OF EXAMPLE PROJECT (FROM SECTION F)</th>
<th>NO.</th>
<th>TITLE OF EXAMPLE PROJECT (FROM SECTION F)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>7</td>
<td></td>
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<tr>
<td>3</td>
<td></td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>10</td>
<td></td>
</tr>
</tbody>
</table>
Federal Acquisition Regulation 53.301-330

H. ADDITIONAL INFORMATION

Section 30: Provide any additional information requested by the agency. Attach additional sheets as needed.

I. AUTHORIZED REPRESENTATIVE

The foregoing is a statement of facts.

Signature

Date

Name and Title

STANDARD FORM 330 (1/2004) PAGE 5
**ARCHITECT-ENGINEER QUALIFICATIONS**

**PART II - GENERAL QUALIFICATIONS**

(If a firm has branch offices, complete for each specific branch office seeking work.)

<table>
<thead>
<tr>
<th>1a. Firm (or branch office) name</th>
<th>2a. Year established</th>
<th>3a. Type</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1b. Street</th>
<th>2b. City</th>
<th>3b. State</th>
<th>4b. Zip code</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1c. Point of contact name and title</th>
<th>2c. E-mail address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1d. Telephone number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1e. Former firm name(s) (if any)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

**9. EMPLOYEES BY DISCIPLINE**

<table>
<thead>
<tr>
<th>a. Function code</th>
<th>b. Discipline</th>
<th>c. No. of Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(1) Firm (2) Branch</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**10. PROFILE OF FIRM'S EXPERIENCE AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS**

<table>
<thead>
<tr>
<th>a. Profile code</th>
<th>b. Experience</th>
<th>c. Revenue Index Number (see below)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**11. ANNUAL AVERAGE PROFESSIONAL SERVICES REVENUES OF FIRM FOR LAST 3 YEARS**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**PROFESSIONAL SERVICES REVENUE INDEX NUMBER**

<table>
<thead>
<tr>
<th>a. Less than $100,000</th>
<th>b. $2 million to less than $5 million</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>6.</td>
</tr>
<tr>
<td>$100,000 to less than $250,000</td>
<td>7. $5 million to less than $10 million</td>
</tr>
<tr>
<td>2.</td>
<td>8. $10 million to less than $25 million</td>
</tr>
<tr>
<td>$250,000 to less than $500,000</td>
<td>9. $25 million to less than $50 million</td>
</tr>
<tr>
<td>3.</td>
<td>10. $50 million or greater</td>
</tr>
<tr>
<td>$500,000 to less than $1 million</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td></td>
</tr>
<tr>
<td>$1 million to less than $2 million</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td></td>
</tr>
</tbody>
</table>

**12. AUTHORIZED REPRESENTATIVE**

The foregoing is a statement of facts.

<table>
<thead>
<tr>
<th>a. Signature</th>
<th>b. Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>c. Name and title</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>
Federal Acquisition Regulation 53.301–1034

53.301–1034 Standard Form 1034, Public Voucher for Purchases and Services Other Than Personal.

**PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL**

<table>
<thead>
<tr>
<th>VOUCHER NO.</th>
<th>VOUCHER DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**DATE VOUCHER PREPAID**

<table>
<thead>
<tr>
<th>SCHEDULE NO.</th>
<th>PAID BY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**CONTRACT NUMBER AND DATE**

**REQUISITION NUMBER AND DATE**

**PAYEE'S NAME AND ADDRESS**

**DATE INVOICE RECEIVED**

**DISCOUNT TERMS**

**PAYEE'S ACCOUNT NUMBER**

**SHIP FROM**

**TO**

**WEIGHT**

**GOVERNMENT I.D. NUMBER**

<table>
<thead>
<tr>
<th>NUMBERS AND DATE OF ORDER</th>
<th>DATE OF DELIVERY OR SERVICE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**ARTICLES OR SERVICES (Write description, item number of invoice, Federal supply number, and other information desired hereafter)**

<table>
<thead>
<tr>
<th>QUAL.</th>
<th>UNIT PRICE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**AMOUNT**

**TOTAL**

**(Payee must NOT use the space below)**

**PAYMENT**

- **PROVISIONAL**
- **COMPLETED**
- **PARTIAL**
- **FINAL**
- **PROGRESS**
- **ADVANCE**

**APPROVED FOR**

- **AMOUNT**

**EXCHANGE RATE**

**AMOUNT**

**DISTRIBUTION**

**PAYEE**

**SIGNATURE**

**ACCOUNTING CLASSIFICATION**

**CHECK NUMBER**

**ON ACCOUNT OF U.S. TREASURY**

**CHECK NUMBER**

**ON (Name of bank)**

**CASH**

**DATE**

**PAYEE**

**S**

**PRIVACY ACT STATEMENT**

The information requested on this form is required under the provisions of 31 U.S.C. 251 and 5 U.S.C. for the purpose of disbursements Federal funds. The information requested is to identify the particular creditor and the amounts to be paid. Failure to furnish this information will hinder discharge of the payment obligation.

---

477
53.301–1034A  Standard Form 1034A, Public Voucher for Purchases and Services Other Than Personal—Memorandum Copy.

<table>
<thead>
<tr>
<th>PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>VOUCHER NO.</td>
<td></td>
</tr>
<tr>
<td>U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION</td>
<td></td>
</tr>
<tr>
<td>DATE VOUCHER PREPARED</td>
<td>SCHEDULE NO.</td>
</tr>
<tr>
<td>CONTRACT NUMBER AND DATE</td>
<td>PAID BY</td>
</tr>
<tr>
<td>PAYMENT NUMBER AND DATE</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>PAYEE'S NAME AND ADDRESS</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>SHIPPED FROM</td>
<td>TO</td>
</tr>
<tr>
<td>WEIGHT</td>
<td></td>
</tr>
<tr>
<td>GOVERNMENT E &amp; I NUMBER</td>
<td></td>
</tr>
<tr>
<td>NUMBER AND DATE OF ORDER</td>
<td>DATE OF DELIVERY OR SERVICE</td>
</tr>
<tr>
<td>ARTICLES OR SERVICES (Give description, item number of contract of Federal supply schedule, and other information deemed necessary)</td>
<td>QUANTITY</td>
</tr>
<tr>
<td></td>
<td>UNIT PRICE</td>
</tr>
<tr>
<td></td>
<td>AMOUNT</td>
</tr>
<tr>
<td>(Payee must NOT use the space below)</td>
<td>TOTAL</td>
</tr>
<tr>
<td>PAYMENTS:</td>
<td>DIFFERENCES</td>
</tr>
<tr>
<td>☐ PROVISIONAL</td>
<td>Amount verified, correct for</td>
</tr>
<tr>
<td>☐ COMPLETE</td>
<td>(Deposit or return)</td>
</tr>
<tr>
<td>☐ PARTIAL</td>
<td></td>
</tr>
<tr>
<td>☐ FINAL</td>
<td></td>
</tr>
<tr>
<td>☐ PROGRESS</td>
<td></td>
</tr>
<tr>
<td>☐ ADVANCE</td>
<td></td>
</tr>
</tbody>
</table>

**MEMORANDUM**

ACCOUNTING CLASSIFICATION

CHECK NUMBER | ON ACCOUNT OF U.S. TREASURY | CHECK NUMBER | ON (Name of bank)

PAID BY

CASH |  | DATE |  |

478
53.301–1035 Standard Form 1035, Public Voucher for Purchases and Services Other Than Personal, Continuation Sheet.

<table>
<thead>
<tr>
<th>NUMBER AND DATE OF ORDER</th>
<th>DATE OF DELIVERY OR SERVICE</th>
<th>ARTICLES OR SERVICES (Name describes kind, nature, service or Federal supply schedule and other identifying submit accuracy)</th>
<th>QUANTITY</th>
<th>UNIT PRICE</th>
<th>AMOUNT</th>
</tr>
</thead>
</table>

Voucher No.
Schedule No.
Sheet No.

479
53.301–1035A  Standard Form 1035A, Public Voucher for Purchases and Services Other Than Personal—Memorandum, Continuation Sheet.

**PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL**

**MEMORANDUM**

**CONTINUATION SHEET**

<table>
<thead>
<tr>
<th>NUMBER AND DATE OF ORDER</th>
<th>DATE OF DELIVERY OR SERVICE</th>
<th>ARTICLES OR SERVICES</th>
<th>QUANTITY</th>
<th>UNIT PRICE</th>
<th>AMOUNT</th>
</tr>
</thead>
</table>

Voucher No.:  
Schedule No.:  
Sheet No.:  

U.S. DEPARTMENT, SERVICE, OR ESTABLISHMENT:
Federal Acquisition Regulation

53.301–1093

53.301–1093 Standard Form 1093, Schedule of Withholdings Under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act.

SCHEDULE OF WITHHOLDINGS UNDER THE DAVIS-BACON ACT (40 U.S.C. 276a)
AND/OR
THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 327–333)

TO THE CLAIMS DIVISION
U.S. GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

Contractor or subcontractor charged
with violations

Prime contractor

Contract No. __________________________, __________________________
(Date)

Report concerning irregularities transmitted to—

(Date)

Deducted from amounts otherwise due the contractor, for deposit to the account "05X6022," covering wages due the employees whose names, social security numbers, and current addresses are listed on the attached schedule, are withholdings pursuant to the following laws:

Davis-Bacon Act $ __________________________
Contract Work Hours and Safety Standards Act $ __________________________
Total $ __________________________

Forwarded herewith is check No. __________________________, dated __________________________ for $ __________________________

(Date)

(Designated officer or other administrative official)

Standard Form 1093
October 1971
# GAO 46
1093–109
These Are Accountable Forms
<table>
<thead>
<tr>
<th>U.S. TAX EXEMPTION FORM</th>
<th>Read the instructions on the reverse side.</th>
<th>DEPARTMENT, AGENCY, OR OFFICE</th>
<th>SERIAL NO.</th>
</tr>
</thead>
<tbody>
<tr>
<td>ITEM PURCHASED FOR EXCLUSIVE USE OF THE U.S. GOVERNMENT (Describe)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>QUANTITY</td>
<td>UNIT PRICE ($)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>VENDOR FROM WHICH PURCHASED</td>
<td>NAME</td>
<td>AMOUNT OF TAX EXCLUDED ($)</td>
<td></td>
</tr>
</tbody>
</table>
| ADDRESS (No., Street, City, State, and ZIP Code) | A tax exemption form has not previously been issued and the described item(s) has (have) been delivered and invoiced pursuant to:
| STATE | LOCAL |
| PURCHASER'S SIGNATURE, OFFICE TITLE, AND ADDRESS | DATE |
| SIGNATURE AND TITLE OF VENDOR'S REPRESENTATIVE | DATE |

The information on this form is true and correct to the best of my knowledge and belief.

P.O. OR CONTRACT NO. FOR ADMINISTRATIVE OFFICE

D.O. SYMBOL NO.

STANDARD FORM 1094 (REV. 12-94)
Prepared by GSA-FAR (48 CFR 53.229)
INSTRUCTIONS

1. This form will be used to establish the Government's exemption or immunity from State or Local taxes whenever no other evidence is available.

2. This form shall NOT be used for:
   (a) Purchases of quarters or subsistence made by employees in travel status.
   (b) Expenses incident to use of a privately owned motor vehicle for which a mileage allowance has been authorized, or
   (c) Merchandise purchased which is subject only to Federal Tax.

3. If the spaces provided on the face of this form are inadequate, attach a separate statement containing the required information.

4. If both State and local taxes are involved, use a separate form for each tax. The form will be provided to the vendor when the prices exclude State or local tax.

5. The serial number of each form prepared will be shown on the payment voucher.

THE FRAUDULENT USE OF THIS FORM FOR THE PURPOSE OF OBTAINING EXCEPTION FROM OR ADJUSTMENT OF TAXES IS PROHIBITED.
<table>
<thead>
<tr>
<th>TAX EXEMPTION FORMS ACCOUNTABILITY RECORD</th>
</tr>
</thead>
<tbody>
<tr>
<td>To be used for convenience of the issuing agency for maintaining a control record of tax exemption forms issued.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TAX EXEMPTION FORMS IN THIS BOOK NUMBERED</th>
<th>FROM</th>
<th>THROUGH</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>TAX EXEMPTION FORMS RETURNED UNUSED FOR REISSUE</th>
<th>FROM</th>
<th>THROUGH</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>ISSUED TO</th>
<th>NAME</th>
<th>TITLE</th>
<th>OFFICE DESIGNATION</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>REISSUED TO</th>
<th>NAME</th>
<th>TITLE</th>
<th>OFFICE DESIGNATION</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>ISSUING OFFICER</th>
<th>SIGNATURE</th>
<th>DATE ISSUED</th>
<th>TITLE AND OFFICE DESIGNATION</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>ISSUING OFFICER</th>
<th>SIGNATURE</th>
<th>DATE ISSUED</th>
<th>TITLE AND OFFICE DESIGNATION</th>
</tr>
</thead>
</table>

STANDARD FORM 1094A (REV. 12-99)
Prescribed by GSA-FAR (48 CFR 53.229)
Certificate of Appointment

United States of America

Contracting Officer

Under authority vested in the undersigned and in conformance with Subpart 1.6 of the Federal Acquisition Regulation

[Signature]

Title

[Title]

Subject to the limitations contained in the Federal Acquisition Regulation and to the following:

[Text]

Unless sooner terminated, this appointment is effective as long as the appointee is assigned to:

[Text]

[Name of Organization]
### 53.301–1403 Preaward Survey of Prospective Contractor (General)

#### SECTION I - REQUEST

<table>
<thead>
<tr>
<th>2. NAME AND ADDRESS OF SURVEYING ACTIVITY</th>
<th>3. SOLICITATION NO.</th>
<th>4. TOTAL OFFERED PRICE</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>5. TYPE OF CONTRACT</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>6A. NAME AND ADDRESS OF SECONDARY SURVEY ACTIVITY</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>6B. TELEPHONE NO. (Dialing Autobahn Ways of Pts. if available)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>6C. FIRM’S CONTACT</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>6D. TELEPHONE NO. (Area Code)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>6E. WILL CONTRACTING OFFICE PARTICIPATE IN SURVEY</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>6F. NAME AND ADDRESS OF PARENT COMPANY (if applicable)</th>
</tr>
</thead>
</table>

#### SECTION II - DATA

<table>
<thead>
<tr>
<th>10B. NATIONAL STOCK NUMBER (ICS and Nomenclature)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>11B. TOTAL QUANTITY</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>12B. UNIT PRICE</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>13B. DELIVERY SCHEDULE</th>
</tr>
</thead>
</table>

**ATTN:**

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR

<table>
<thead>
<tr>
<th>1. DETAILED NO. For surveysing activity use FORM APPROVED OMB NO. (2003-0011)</th>
</tr>
</thead>
</table>

**Public reporting burden for this collection of information is estimated to average 4 hours per response, excluding the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to the Office of Management and Budget, Paperwork Reduction Project (2003-0011), Washington, D.C., 20570.**
## Section III - Factors to be Investigated

<table>
<thead>
<tr>
<th>19. Major Factors</th>
<th>20. Other Factors (Provide specific requirements in Remarks)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Chk</td>
</tr>
<tr>
<td>A. Technical Capability</td>
<td>A. Government Property Control</td>
</tr>
<tr>
<td>B. Production Capability</td>
<td>B. Transportation</td>
</tr>
<tr>
<td>C. Quality Assurance Capability</td>
<td>C. Packaging</td>
</tr>
<tr>
<td>D. Financial Capability</td>
<td>D. Security</td>
</tr>
<tr>
<td>E. Accounting System</td>
<td>E. Safety</td>
</tr>
<tr>
<td>F. Environmental/Energy Considerations</td>
<td>F. Flight Operations/Flight Safety</td>
</tr>
<tr>
<td>G. Other (Specify)</td>
<td></td>
</tr>
</tbody>
</table>

21. If Yes, a postaward report for completion by surveying activity:

22. If a financial assistance payment provision in the solicitation for completion by contracting activity:

23. Required for Competing Activity User

## Section IV - Surveying Activity Recommendations

<table>
<thead>
<tr>
<th>24. Recommend</th>
<th>STA. NAME AND TITLE OF SURVEY APPROVING OFFICIAL</th>
<th>EMER. TELEPHONE NO.</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Complete Award</td>
<td>SEC. SIGNATURE</td>
<td>EMER. DATE</td>
</tr>
<tr>
<td>B. Partial Award</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C. No Award</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(55 FR 25553, June 21, 1990)
53.301–1404 Preaward Survey of Prospective Contractor—Technical.

### Preaward Survey of Prospective Contractor Technical

<table>
<thead>
<tr>
<th>SERIAL NO.</th>
<th>FOR SURVEYING ACTIVITY Code</th>
<th>FORM APPROVED OMB NO.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>9000–1011</td>
</tr>
</tbody>
</table>

PUBLIC REPORTING BURDEN FOR THIS COLLECTION OF INFORMATION IS ESTIMATED TO AVERAGE 24 HOURS PER RESPONSE, INCLUDING THE TIME FOR REVIEWING INSTRUCTIONS, SEARCHING EXISTING DATA SOURCES, GATHERING AND PREPARING THE DATA NEEDED, AND CLEARING AND REVIEWING THE COLLECTION OF INFORMATION. SEND COMMENTS REGARDING THE BURDEN ESTIMATE ON ANY OTHER ASPECT OF THE COLLECTION OF INFORMATION, INCLUDING SUGGESTIONS FOR REDUCING THE BURDEN, TO THE FEDERAL SECURITY OFFICE, OFFICE OF FEDERAL ACQUISITION AND REGULATORY POLICY, USA, WASHINGTON, DC 20425, AND TO THE OFFICE OF MANAGEMENT AND BUDGET, PAPERWORK REDUCTION PROJECT (9000–1011), WASHINGTON, DC.

1. RECOMMENDED
   - A. COMPLETE AWARD
   - B. PARTIAL AWARD (Identify)
   - C. NO AWARD

2. VOCABULARY: Include the following information concerning key personnel who will be involved with the prospective contract in the capacity to provide, qualifications, experience and length of experience, of qualification, the requirements of the contract, or in the continuing to determine the technical capabilities of the prospective contractor. Comment on the prospective contractor's efforts to obtain the needed technical capabilities.

3. FIRM HAS AND/OR UNDERSTANDS (Give explanation for any items marked "NO" in section 2. narrative)

4. SIGNATURE AND OFFICE (Include typed or printed name)

5. TELEPHONE NO. (Include area code)

6. DATE REVIEWED

7. AUTHORIZED FOR LOCAL APODATION (Expiry Date 9–30–91)

---

[55 FR 25555, June 21, 1990]
Federal Acquisition Regulation

53.301–1405 Preaward Survey of Prospective Contractor—Production.

<table>
<thead>
<tr>
<th>PREAMBLED SURVEY OF PROSPECTIVE CONTRACTOR PRODUCTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>OCCurrence No. For surveying activity use. FORM APPROVED OMB No.</td>
</tr>
</tbody>
</table>

53.301–1405 Preaward Survey of Prospective Contractor—Production.

Public reporting burden for the collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAIR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, OMB, Washington, D.C. 20405, and to the Office of Management and Budget, Paperwork Reduction Project (0902–0031), Washington, D.C. 20503.

SECTION 1 – RECOMMENDATION

1. RECOMMENDATION
   a. COMPLETE AWARD
   b. PARTIAL AWARD (IDENTIFY)
   c. NO AWARD

2. NARRATIVE WITH SPECIFIC REASONS OF THE DECISION WHICH SUPPORTS RECOMMENDATIONS. DELETE ANY OTHER USAGE INSTRUCTIONS ON THIS SHEET OR ON ATTACHED SHEET IF NEEDED. IDENTIFY ALL SYSTEMS REVIEWED AND THEIR RESULTS.

3. SURVEY MADE BY
   a. SIGNATURE AND OFFICE (Include typed or printed name)
   b. TELEPHONE NO.
   c. DATE PERFORMED

4. SURVEY REVIEWED
   a. SIGNATURE AND OFFICE (Include typed or printed name)
   b. TELEPHONE NO.
   c. DATE REVIEWED

AUTHORIZED FOR LOCAL REPRODUCTION EXPANSION DATE: 9-30-81

STANDARD FORM 1405

REV. 8-497
Prepared by OMB—FAR 188 CFR 53.301–305

493
### Section II - Plant Facilities

<table>
<thead>
<tr>
<th>Type</th>
<th>Square Feet</th>
<th>Adequate</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>M</td>
<td>Total manufacturing space</td>
<td><strong>A. Good housekeeping maintained</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>Square feet available for operated item</td>
<td>B. Power and fuel supply adequate to meet production requirements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>Total storage space</td>
<td>C. Alternate power and fuel source available</td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>For inspection lots</td>
<td>D. Adequate material handling equipment available</td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>For shipping quantities</td>
<td>E. Transportation facilities available for shipping product</td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>Space available for operated item</td>
<td>F.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>Amount of storage that can be converted for manufacturing if required</td>
<td>G.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Section III - Production Equipment

<table>
<thead>
<tr>
<th>List Major Equipment Required (include GFP and annotation as such)</th>
<th>Quantity Required for Proposed Contract</th>
<th>Total Qty. Required for Proposed Contract</th>
<th>Quantity on Hand</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Manufacturing</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Special Tools</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Coordinate shortage information for financial implications.*
### SECTION IV — MATERIALS, PURCHASED PARTS AND SUBCONTRACTS

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>SOURCE</th>
<th>DELIVERY DUE TO MEET PROD.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>(b)</td>
<td>(c)</td>
</tr>
</tbody>
</table>

2. Describe the material control system indicating whether it is currently operational and evaluate its ability to meet the needs of the proposed acquisition.

### SECTION V — PERSONNEL

<table>
<thead>
<tr>
<th>TYPE OF EMPLOYEES</th>
<th>NO. ON BOARD</th>
<th>ADD. NO. REQUIRED</th>
<th>AVAIL.</th>
<th>YES</th>
<th>NO</th>
<th>SOURCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Skilled Production</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Unskilled Production</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. Engineering</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. Administrative</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>e. Tot. Lines a thru d</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### SECTION VI — DELIVERY PERFORMANCE RECORD

<table>
<thead>
<tr>
<th>AGREEMENT EXPIRATION DATE</th>
<th>RELATIONSHIP WITH LABOR INDICATES PROBLEMS AFFECTING TIMELY PERFORMANCE OF PROPOSED CONTRACT</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

STANDARD form 1409 rev. 9-90 PAGE 9

495
### SECTION VII – RELATED PREVIOUS PRODUCTION (Government)

<table>
<thead>
<tr>
<th>ITEM NOMENCLATURE</th>
<th>NATIONAL STOCK NO. (INSN)</th>
<th>GOVERNMENT CONTRACT NUMBER</th>
<th>PERFORMANCE CTR. SCHEDULED</th>
<th>PERFORMANCE CTR. DEMAND</th>
<th>QUANTITY</th>
<th>DOLLAR VALUE (SOLD)</th>
</tr>
</thead>
</table>

1. Identify identical items by an asterisk (*) after the Government contract number.

### SECTION VII – CURRENT PRODUCTION

(Government and civilian concurrent production schedule using same equipment and/or personnel as offered item)

<table>
<thead>
<tr>
<th>PERIODS: Include Government Contract No. if applicable. Identify unsatisfactory performance with asterisk (*)</th>
<th>1st</th>
<th>2nd</th>
<th>3rd</th>
<th>4th</th>
<th>5th</th>
<th>6th</th>
<th>7th</th>
<th>8th</th>
<th>9th</th>
<th>10th</th>
<th>11th</th>
<th>12th</th>
<th>ENDING BAL.</th>
</tr>
</thead>
</table>

### SECTION IX – ORGANIZATION AND MANAGEMENT DATA

Provide the following information in SECTION I NARRATIVE:

1. Describe the relationship between management, production, and inspection. Attach an organizational chart, if available.

2. Describe the prospective contractor's production control system. State whether or not it is operational.

3. Evaluate the prospective contractor's production control system in terms of (a) historical effectiveness, (b) the proposed contract, and (c) total production during performance of the proposed contract.

4. Comment on or evaluate other areas unique to this survey (include all special requests by the contracting office and any other information pertinent to the proposed contract or item classification).

---

(55 FR 25556, June 21, 1990)

<table>
<thead>
<tr>
<th>SECTION I - RECOMMENDATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. RECOMMEND:</td>
</tr>
<tr>
<td>- AWARD</td>
</tr>
<tr>
<td>- NO AWARD (Provide full substantiation for recommendation in 4. NARRATIVE)</td>
</tr>
<tr>
<td>2. IF PROSPECTIVE CONTRACTOR RECEIVES AWARD, A POST AWARD CONFERENCE IS RECOMMENDED:</td>
</tr>
<tr>
<td>- YES</td>
</tr>
<tr>
<td>- NO</td>
</tr>
<tr>
<td>3. AN ON-SITE SURVEY WAS PERFORMED.</td>
</tr>
<tr>
<td>- YES</td>
</tr>
<tr>
<td>- NO</td>
</tr>
<tr>
<td>4. NARRATIVE</td>
</tr>
</tbody>
</table>

| IF CONTINUATION SHEETS ATTACHED - MARK HERE |

<table>
<thead>
<tr>
<th>5. SURVEY MADE BY</th>
<th>6. SURVEY REVIEWING OFFICIAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. SIGNATURE</td>
<td>A. SIGNATURE</td>
</tr>
<tr>
<td>B. DATE SIGNED</td>
<td>B. DATE REVIEWED</td>
</tr>
<tr>
<td>C. NAME</td>
<td>C. NAME</td>
</tr>
<tr>
<td>D. OFFICE</td>
<td>D. OFFICE</td>
</tr>
<tr>
<td>E. AREA CODE</td>
<td>E. AREA CODE</td>
</tr>
<tr>
<td>F. TELEPHONE NUMBER</td>
<td>F. TELEPHONE NUMBER</td>
</tr>
<tr>
<td>G. EXT.</td>
<td>G. EXT.</td>
</tr>
</tbody>
</table>

AUTHORIZED FOR LOCAL REPRODUCTION
Permitted edition is not usable.
### SECTION II - COMPANY AND SOLICITATION DATA

1. Simply describe how quality assurance responsibilities are accomplished.

### 2. QUALITY ASSURANCE OFFICIALS CONTACTED

<table>
<thead>
<tr>
<th>A. Name</th>
<th>B. Title</th>
<th>C. Years of Quality Assurance Experience</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 3. APPLICABLE CONTRACT QUALITY REQUIREMENTS

<table>
<thead>
<tr>
<th>A. Number</th>
<th>B. Title</th>
<th>C. Tailoring (if any)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| D. Identify or similar items have been procured, supplied, or serviced by prospective contractor (if similar items, identify) |

### SECTION III - EVALUATION CHECKLIST

<table>
<thead>
<tr>
<th>STATEMENTS</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Items (where applicable to the contract) are understood by the prospective contractor.</td>
<td>A.</td>
<td>B.</td>
</tr>
</tbody>
</table>

2. Records available indicate that the prospective contractor has a satisfactory quality performance record during the past twelve (12) months for similar items.

3. Used, reconditioned, or remanufactured material and former government surplus material will be furnished by the prospective contractor. (If yes, explain in Section I (NARRATIVE)).

4. Prospective contractor will require unusual assistance from the Government. (If yes, explain in Section I (NARRATIVE)).

5. Did prospective contractor fulfill commitments to correct deficiencies, as proposed on previous surveys, when awarded that contract? (If no, explain in Section I (NARRATIVE)).

6. Quality verification personnel number skilled |

7. Quality verification to production personnel ratio. |

THE FOLLOWING ARE AVAILABLE AND ADEQUATE. (If not applicable, show "Not" or "Yes" column.)

| 0. Inspection and test equipment, gauges, and instruments for first article and production (including solicitation specified equipment). |
| 1. Calibration/metrology program. |
| 2. Quality system procedures and controls. |
| 3. Control of specifications, drawings, changes and modifications, work/process instructions. |
| 4. Program for determining inspection, test, and measurement requirements. |
| 5. Purchasing. Processes for selecting qualified suppliers and assuring the quality of purchased materials. |
| 6. Product identification, segregation, traceability, and maintenance. |
| 10. Preservation, storage, packaging, packing, marking, and delivery controls. |
| 11. Records such as: Inspection, test, status, corrective actions, calibration, etc. |
| 12. Controls for investigation of customer complaints and correction of deficiencies. |
| 13. Design controls system. |
| 14. Computer software (deliverable and/or non-deliverable) quality assurance program. |
| 15. Management review and internal quality audits. |
| 16. Quality assurance training program. |
| 17. Installation and servicing quality assurance program. |

STANDARD FORM 1406 REV. 11-95 BACK

Federal Acquisition Regulation

53.301–1407  Preaward Survey of Prospective Contractor—Financial Capability.

53.301–1407  Preaward Survey of Prospective Contractor—Financial Capability.

SECTION I – RECOMMENDATION

1. RECOMMENDED
   a. COMPLETE AWARD
   b. PARTIAL AWARD
   c. NO AWARD

2. TOTAL OFFERED PRICE

3. COMMENTS: Use more sections of the report which substantiate the recommendation. Give any other backup information in the space or on an additional sheet, if necessary.

4. SURVEY MADE BY
   a. SIGNATURE AND OFFICE (underline typed or printed name)
   b. TELEPHONE NO.
   c. DATE REVIEWED

5. SURVEY REVIEWING OFFICIAL
   a. SIGNATURE AND OFFICE (underline typed or printed name)
   b. TELEPHONE NO.
   c. DATE REVIEWED

Authorized for Local Reproduction: EXPIRATION DATE: 5-30-81

499
### SECTION II - GENERAL

1. TYPE OF COMPANY
   - [ ] CORPORATION
   - [ ] SUBSIDIARY
   - [ ] PROPRIETORSHIP
   - [ ] OTHER (Specify)

2. YEAR ESTABLISHED

3. NAME AND ADDRESS OF:
   - [ ] PARENT CO.
   - [ ] SUBSIDIARIES

### SECTION III - BALANCE SHEET/PROFIT AND LOSS STATEMENT

#### PART A - LATEST BALANCE SHEET

<table>
<thead>
<tr>
<th>1. DATE</th>
<th>2. FIRM WITH</th>
<th>3. CURRENT PERIOD</th>
</tr>
</thead>
</table>

#### PART B - LATEST PROFIT AND LOSS STATEMENT

<table>
<thead>
<tr>
<th>2. FIRM</th>
<th>3. TO</th>
</tr>
</thead>
</table>

#### A. NET SALES

<table>
<thead>
<tr>
<th>3. NET SALES</th>
</tr>
</thead>
</table>

#### B. INVENTORY

<table>
<thead>
<tr>
<th>4. INVENTORY</th>
</tr>
</thead>
</table>

#### C. OTHER CURRENT ASSETS

<table>
<thead>
<tr>
<th>5. OTHER CURRENT ASSETS</th>
</tr>
</thead>
</table>

#### D. NET PROFFITS BEFORE TAXES

<table>
<thead>
<tr>
<th>6. NET PROFFITS BEFORE TAXES</th>
</tr>
</thead>
</table>

#### E. FISCAL YEAR ENDS ON

<table>
<thead>
<tr>
<th>7. FISCAL YEAR ENDS ON</th>
</tr>
</thead>
</table>

#### F. BALANCE SHEETS AND THROUGH DATES

<table>
<thead>
<tr>
<th>8. BALANCE SHEETS AND THROUGH DATES</th>
</tr>
</thead>
</table>

#### G. H. THROUGH E. AND F SIGNATURES

<table>
<thead>
<tr>
<th>9. SIGNATURES</th>
</tr>
</thead>
</table>

#### H. PROOF AND LOSS STATEMENTS HAVE BEEN CERTIFIED

<table>
<thead>
<tr>
<th>10. CERTIFICATION</th>
</tr>
</thead>
</table>

### SECTION IV - PROSPECTIVE CONTRACTORS' FINANCIAL ARRANGEMENTS

<table>
<thead>
<tr>
<th>11. USE OF OWN RESOURCES</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>12. USE OF BANK CREDITS</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>13. OTHER (Specify)</th>
</tr>
</thead>
</table>

### SECTION V - GOVERNMENT FINANCIAL AID

<table>
<thead>
<tr>
<th>14. TO BE REQUESTED IN CONNECTION WITH PERFORMANCE OF PROPOSED CONTRACT</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>15. PROGRESS PAYMENTS</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>16. ADVANCE PAYMENTS</th>
</tr>
</thead>
</table>

### 3. FINANCIAL AID CURRENTLY OBTAINED FROM THE GOVERNMENT

<table>
<thead>
<tr>
<th>17. PROSPECTIVE CONTRACTOR RECEIVES GOVERNMENT FINANCING AT PRESENT</th>
</tr>
</thead>
</table>

### 4. LIST THE GOVERNMENT AGENCIES INVOLVED

### 5. SHOW THE APPLICABLE CONTRACT NO.

---

**STANDARD FORM 1407 REV. 6-94 PAGE 2**
SECTION VI – BUSINESS AND FINANCIAL RePUTATION

1. COMMENTS OF PROSPECTIVE CONTRACTORS' BANK

2. COMMENTS OF TRADE CREDITORs

3. COMMENTS AND REPORTS OF COMMERCIAL FINANCIAL SERVICES AND CREDIT ORGANIZATIONS (Such as Dun & Bradstreet, Standard and Poor, etc.)

4. MOST RECENT CREDIT RATING
   DATE
   BY

5. DOES PRICE APPEAR UNREALISTICALLY LOW?
   YES
   NO
   BY
   YES, EXPLAIN IN SECTION I NARRATIVEd

6. "DESCRIBE ANY OUTSTANDING LENS OR JUDGMENTS

SECTION VII – SALES (ID$5) FOR NEXT SIX QUARTERS

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. CURRENT CONTRACT SALES ( backlog)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. GOVERNMENT (Prime &amp; Subcontractor)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. COMMERCIAL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. ANTICIPATED ADDITIONAL SALES</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. GOVERNMENT (Prime and Subcontractor)</td>
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<td></td>
<td></td>
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<tr>
<td>B. COMMERCIAL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. TOTALS</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

STANDARD FORM 1437 REV. 9-48 PAGE 3

[55 FR 25662, June 21, 1990]
53.301–1408 Preaward Survey of Prospective Contractor—Accounting System.

<table>
<thead>
<tr>
<th>PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR ACCOUNTING SYSTEM</th>
</tr>
</thead>
<tbody>
<tr>
<td>SERIAL NO. For surveying activity use</td>
</tr>
<tr>
<td>FORM APPROVED OMB NO.</td>
</tr>
<tr>
<td>9000–0011</td>
</tr>
<tr>
<td>PROSPECTIVE CONTRACTOR</td>
</tr>
</tbody>
</table>

Public reporting burden for the collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the OMB Storage of Information and Regulatory Policy, USA, Washington, D.C. 20503, and to the Office of Management and Budget, Paperwork Reduction Project (9000–0011), Washington, D.C. 20503.

SECTION 1—RECOMMENDATION

1. Prospective Contractor’s Accounting System is Acceptable for Award of Prospective Contract:
   - [ ] YES
   - [ ] NO
   - [ ] YES, WITH A RECOMMENDATION THAT A FOLLOW ON ACCOUNTING SYSTEM REVIEW BE PERFORMED AFTER CONTRACT AWARD
   - [ ] NO, REASONS:

   - [ ] NARRATIVE: Identification of deficiencies, and other pertinent comments. (If additional space is required, continue on plain sheets of paper.)

3. Survey Made By
   - [ ] SIGNATURE AND OFFICE (name typed or printed name):
   - [ ] TELEPHONE NO. (include area code):
   - [ ] DATE SIGNED:

4. Survey Receiving Official
   - [ ] SIGNATURE AND OFFICE (name typed or printed name):
   - [ ] TELEPHONE NO. (include area code):
   - [ ] DATE REVIEWED:

5. Authority for Local Reproduction
   - [ ] EXPIRATION DATE: 9–30–91
   - [ ] 1408–150

STANDARD FORM 1988

502
## SECTION II - EVALUATION CHECKLIST

<table>
<thead>
<tr>
<th>MARK &quot;X&quot; IN THE APPROPRIATE COLUMN (Explain any deficiencies in SECTION I NARRATIVE)</th>
<th>YES</th>
<th>NO</th>
<th>NOT APPLICABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. EXCEPT AS STATED IN SECTION I NARRATIVE, IS THE ACCOUNTING SYSTEM IN ACCORD WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES APPLICABLE IN THE CIRCUMSTANCES?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. ACCOUNTING SYSTEM PROVIDES FOR:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Proper segregation of direct costs from indirect costs.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Identification and accumulation of direct costs by contract.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. A logical and consistent method for the allocation of indirect costs to intermediate and final cost objectives. (A contract is a final cost objective)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. Accumulation of costs under general ledger control.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>e. A timekeeping system that identifies employees' labor by intermediate or final cost objectives.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>f. A labor distribution system that charges direct and indirect labor to the appropriate cost objectives.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>g. A (at least monthly) determination of costs charged to a contract through routine posting of books of account.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>h. Exclusion from costs charged to government contracts of amounts which are not allowable in terms of FAR 31, Contract Cost Principles and Procedures, or other contract provisions.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>i. Identification of costs by contract line item and by units (as if each unit or line item were a separate contract) if required by the proposed contract.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>j. Segregation of preproduction costs from production costs.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. ACCOUNTING SYSTEM PROVIDES FINANCIAL INFORMATION:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Required by contract clauses concerning limitation of cost (FAR 52.232-20 and 21), or limitation on payments (FAR 52.215-1)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Required to support requests for progress payments.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>4. IS THE ACCOUNTING SYSTEM DESIGNED, AND ARE THE RECORDS MAINTAINED IN SUCH A MANNER THAT ADEQUATE, RELIABLE DATA ARE DEVELOPED FOR USE IN PRICING FOLLOW-ON ACQUISITIONS?</td>
<td></td>
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</tr>
<tr>
<td>5. IS THE ACCOUNTING SYSTEM CURRENTLY IN FULL OPERATION?</td>
<td></td>
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</tr>
<tr>
<td>(If not, describe in Section I Narrative which portions are (1) in operation, (2) set up, but not yet in operation, (3) anticipated, or (4) none-existent)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NO</th>
<th>NAME OF OFFEROR</th>
<th>DESCRIPTION</th>
<th>ITEM NO.</th>
<th>QUANTITY</th>
<th>UNIT</th>
<th>DELIVERY TIME **</th>
<th>F.O.B. POINT</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

* Indicates if no. of shipping containers.
** Indicates if an X refers to delivery time specified in solicitation.

I CERTIFY THAT I HAVE OPENED, READ AND REVIEWED THIS ABSTRACT AND CONSIDER IT ACCEPTED IN RESPONSE TO THE SOLICITATION.

SIGNATURE

DATE

STANDARD FORM 1409 (Rev. 9-88)
Prepared by GSA, FAS (April 1987)
Federal Acquisition Regulation

53.301–1410


[54 FR 20286, July 11, 1989]
## 53.301-1413

### Standard Form 1413, Statement and Acknowledgment

<table>
<thead>
<tr>
<th>STATEMENT AND ACKNOWLEDGMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>OMB No.: 9000-5014</td>
</tr>
<tr>
<td>Expires: 01/31/2008</td>
</tr>
</tbody>
</table>

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat, 4800 Secretary's Drive, Suite 9000, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-5014), Washington, DC 20503.

### PART I - STATEMENT OF PRIME CONTRACTOR

1. **Prime Contract No.**
2. **Date Subcontract Awarded**
3. **Subcontract Number**

4. **Prime Contractor**
   1. NAME
   2. STREET ADDRESS
   3. CITY

5. **Subcontractor**
   1. NAME
   2. STREET ADDRESS
   3. CITY
   4. STATE
   5. ZIP CODE

6. The prime contract [ ] does, [ ] does not contain the clause entitled "Contract Work Hours and Safety Standards Act -- Overtime Compensation."

7. The prime contractor states that under the contract shown in Item 1, a subcontract was awarded on the date shown in Item 2 to the subcontractor identified in Item 5 by the following firm:
   1. **Name of Awarding Firm**

8. **Description of work by subcontractor**

### PART II - ACKNOWLEDGMENT OF SUBCONTRACTOR

10a. **Name of Person Signing**
11. **By (Signature)**
12. **Date Signed**

10b. **Title of Person Signing**

13. The subcontractor acknowledges that the following clauses of the contract shown in Item 1 are included in this subcontract:
   - Contract Work Hours and Safety Standards Act - Overtime Compensation
   - Payrolls and Basic Records
   - Withholding of Funds
   - Disputes Concerning Labor Standards
   - Compliance with Davis-Bacon and Related Act Regulations

14. **Name(s) of any intermediate subcontractors, if any**

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
</tr>
</thead>
</table>

15a. **Name of Person Signing**
16. **By (Signature)**
17. **Date Signed**

15b. **Title of Person Signing**

[70 FR 33669, June 8, 2005]

506
### SF 1414 (Rev. 10/93) Consent of Surety

<table>
<thead>
<tr>
<th>CONSENT OF SURETY</th>
<th>1. CONTRACT NUMBER</th>
<th>2. MODIFICATION NUMBER</th>
<th>3. DATED</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. INDIVIDUAL PRINCIPAL</td>
<td>BUSINESS ADDRESS</td>
<td>SIGNATURE (Affix Seal)</td>
<td></td>
</tr>
<tr>
<td>B. CORPORATE NAME AND BUSINESS ADDRESS</td>
<td>NAME AND TITLE</td>
<td>DATE THIS CONSENT EXECUTED</td>
<td></td>
</tr>
<tr>
<td>C. CORPORATE PRINCIPAL</td>
<td>PERSON EXECUTING CONSENT (Signature)</td>
<td>BY</td>
<td></td>
</tr>
<tr>
<td>D. DATE THIS CONSENT EXECUTED</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. CORPORATE/INDIVIDUAL SURETY (CO-SURETIES)

The Principal or authorized representative shall execute this Consent of Surety with the modification to which it pertains. If the representative (e.g., attorney-in-fact) that signs the consent is not a member of the partnership, or joint venture, or an officer of the corporation involved, a Power of Attorney or a Certificate of Corporate Principal must accompany the consent.

<table>
<thead>
<tr>
<th>A. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS</th>
<th>PERSON EXECUTING CONSENT (Signature)</th>
</tr>
</thead>
<tbody>
<tr>
<td>B. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS</td>
<td>PERSON EXECUTING CONSENT (Signature)</td>
</tr>
<tr>
<td>C. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS</td>
<td>PERSON EXECUTING CONSENT (Signature)</td>
</tr>
<tr>
<td>D. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS</td>
<td>PERSON EXECUTING CONSENT (Signature)</td>
</tr>
</tbody>
</table>

(Additional signature blocks on the back of this form if necessary for additional consents)
CONSENT OF SURETY AND INCREASE OF PENALTY

<table>
<thead>
<tr>
<th>A. CONTRACT NUMBER</th>
<th>B. MODIFICATION NUMBER</th>
<th>C. DATED</th>
</tr>
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<tbody>
<tr>
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</tbody>
</table>

d. The surety (insured) consents to the foregoing contract modification and agrees that the (new) bond or bonds shall apply and extend to the contract as modified or amended. The principal and surety (insured) further agree that on or after the execution of this consent, the penalty of the performance bond or bonds is increased by $_____. However, the increase of liability of each co-surety resulting from this consent shall not exceed the sum shown below.

<table>
<thead>
<tr>
<th>E. NAME OF SURETY(ES)</th>
<th>F. INCREASE IN LIABILITY LIMIT UNDER PERFORMANCE BOND</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>G. INDIVIDUAL PRINCIPAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. BUSINESS ADDRESS</td>
</tr>
<tr>
<td>B. SIGNATORY</td>
</tr>
<tr>
<td>C. TYPED NAME AND TITLE</td>
</tr>
<tr>
<td>D. DATE THIS EXECUTED</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>H. CORPORATE PRINCIPAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. CORPORATE NAME AND BUSINESS ADDRESS</td>
</tr>
<tr>
<td>B. PERSON EXECUTING CONSENT (Signature)</td>
</tr>
<tr>
<td>C. TYPED NAME AND TITLE</td>
</tr>
<tr>
<td>D. DATE THIS EXECUTED</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>I. CORPORATE/INDIVIDUAL SURETY(ES)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS</td>
</tr>
<tr>
<td>B. PERSON EXECUTING CONSENT (Signature)</td>
</tr>
<tr>
<td>C. TYPED NAME AND TITLE</td>
</tr>
<tr>
<td>D. DATE THIS EXECUTED</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>J. CORPORATE/INDIVIDUAL SURETY(ES)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS</td>
</tr>
<tr>
<td>B. PERSON EXECUTING CONSENT (Signature)</td>
</tr>
<tr>
<td>C. TYPED NAME AND TITLE</td>
</tr>
<tr>
<td>D. DATE THIS EXECUTED</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>K. CORPORATE/INDIVIDUAL SURETY(ES)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS</td>
</tr>
<tr>
<td>B. PERSON EXECUTING CONSENT (Signature)</td>
</tr>
<tr>
<td>C. TYPED NAME AND TITLE</td>
</tr>
<tr>
<td>D. DATE THIS EXECUTED</td>
</tr>
</tbody>
</table>

[59 FR 67063, Dec. 28, 1994]
Payment Bond for Other than Construction Contracts.

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severely" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:
The Principal has entered into the contract identified above.

THEREFORE:

(a) The above obligation is void if the Principal promptly makes payments to all persons (claimants) having a contract relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above and any duly authorized modifications thereof. Notice of those modifications to the Surety(ies) are waived.

(b) The above obligation shall remain in full force if the Principal does not promptly make payments to all persons (claimants) having a contract relationship with the principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the contract identified above. In these cases, persons not paid in full before the expiration of ninety (90) days after the date of which the last labor was performed or material furnished, have a direct right of action against the principal and Surety(ies) on the bond for the sum or sums jointly due. The claimant(s), however, may not bring a suit or any action -

(1) Unless claimant(s), other than one having a direct contract with the Principal, had given written notice to the Principal within ninety (90) days after the claimant(s) or performed the last of the work or labor, or furnished or supplied the last of the materials for which the claim(s) is made. The notice is to state with substantial accuracy the materials furnished or supplied, the last of the materials for which the claim(s) is made, and the name of the party to whom the materials were furnished or supplied, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the Principal at any place, at which an office is regularly maintained for the transaction of business, or served in any manner in which legal process is served in the state in which the contract is being performed, save that such service need not be made by a public officer.

(2) After the expiration one (1) year following the date or which claimant(s) did or performed the last of the work or labor or furnished or supplied the last of the materials for which the suit is brought.

(3) Other than in the United States District court for the district in which the the contract, or any part thereof, was performed and executed, and not elsewhere.

WITNESS:
The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.
## INSTRUCTIONS

1. This form is authorized for use when payment bonds are required under FAR 28.103-3, i.e., payment bonds for other than construction contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury’s list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual Sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal," and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.
53.301–1418  Performance bond for other than construction contracts.

<table>
<thead>
<tr>
<th>PERFORMANCE BOND FOR OTHER THAN CONSTRUCTION CONTRACTS</th>
<th>DATE BOND EXECUTED (Must be same or later than date of contract)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(See instructions on reverse)</td>
<td></td>
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</tbody>
</table>

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (AFRL), Federal Acquisition Policy Office, USAF, Washington, DC 20301.

OMB No.: 9000-0045

PRINCIPAL (legal name and business address)

TYPE OF ORGANIZATION
- INDIVIDUAL
- PARTNERSHIP
- JOINT VENTURE
- CORPORATION

STATE OF INCORPORATION

SURETY(IES) (name(s) and business address(es))

PENAL SUM OF BOND
- MILLION
- THOUSAND
- HUNDRED
- DOLLAR

CONTRACT DATE

OPTION DATE

OPTION NO.

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum, for payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Surety(ies) are corporations acting as co-sureties, we, the Surety(ies) bind ourselves in such sum "jointly and severally" as well as "several" only for the purpose of discharging a joint action or action against any or all of us. For all other purposes, each Surety(ies) individually, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE

The above obligation is void if the Principal: (1) Performs and fulfills all the undertakings, conditions, agreements of the contract; (2) extends or extends the time of any guaranty required under the contract; and (2) performs and fulfills all the undertakings, conditions, agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) is waived.

The guaranty for a base term covers the initial period of performance of the contract and any extensions thereof excluding any options. The guaranty for an option term covers the period of performance for the option being exercised and any extensions thereof.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL

SIGNATURE(S)

(name)

(name)

NAME(S) & TITLE(S)

(Typed)

INDIVIDUAL SURETY(IES)

SIGNATURE(S)

(name)

(name)

NAME(S)

(Typed)

CORPORATE SURETY(IES)

SIGNATURE(S)

(name)

(name)

NAME(S) & TITLE(S)

(Typed)

AUTHORIZED FOR LOCAL REPRODUCTION

PREVIOUS EDITION NOT VALID

STANDARD FORM 1418

(Rev. 3-98)

Prepared by GSA/AFAR (DFR 52-2285)

511
53.301–1418
48 CFR Ch. 1 (10–1–09 Edition)

<table>
<thead>
<tr>
<th>NAME &amp; ADDRESS</th>
<th>STATE OF INC.</th>
<th>LIABILITY LIMIT</th>
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<tbody>
<tr>
<td>Signature(1)</td>
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</tr>
<tr>
<td>Names &amp; Titles (2)</td>
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</table>

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<td>Names &amp; Titles (2)</td>
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<td></td>
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</tr>
<tr>
<td>Names &amp; Titles (2)</td>
<td>2.</td>
<td></td>
</tr>
</tbody>
</table>

**INSTRUCTIONS**

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated “Principal” on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. Corporations executing the bond as sureties must appear on the Department of the Treasury’s list of approved sureties and must act within the limitations listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed “CORPORATE Surety(IES)” in the space designated “Surety(IES)” on the face of the form, insert only the letters identifying the sureties.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word “Corporate Seal”, and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

6. Unless otherwise specified, the bond shall be submitted to the contracting office that awarded the contract.

[64 FR 10649, Mar. 4, 1999]
Federal Acquisition Regulation

53.301–1423  Inventory Verification Survey.

INVENTORY VERIFICATION SURVEY
(See FAR 45.602-1a(b)(1))

DATE

SECTION I - GENERAL

1. FROM (Include ZIP Code)

2. TO (Include ZIP Code)

3. CONTRACT NUMBER AND TYPE

4. CONTRACTOR/SUBCONTRACTOR

5A. SCHEDULES OF INVENTORY TO BE INSPECTED AND VERIFIED

5B. PARS CASE NUMBER/DOCUMENT NUMBER

6. IS PROPERTY LISTS ON THE INVENTORY DISPOSAL SCHEDULES ON HAND AND IN THE QUANTITIES INDICATED?

7. IS THE PROPERTY CORRECTLY DESCRIBED ON THE INVENTORY DISPOSAL SCHEDULES?

8. IS THE PROPERTY SEGREGATED OR ADEQUATELY PROTECTED?

9. IS THE PROPERTY PROPERLY TAGGED?

10. ARE THE CONDITION CODES ACCURATE?

11. IS THE PROPERTY CLASSIFICATION CORRECTLY IDENTIFIED?

SECTION II - TECHNICAL VERIFICATION

6. ARE THE WEIGHS OF THE ITEMS APPROXIMATELY CORRECT?

7. IF WEIGHTS ARE NOT SHOWN, GIVE ESTIMATE OF WEIGHT BY BASIC MATERIAL CONTENT

8. DO THE ITEMS APPEAR TO HAVE COMMERCIAL VALUE OTHER THAN SCRAP?

9. DO CONTRACTOR MAKE REASONABLE EFFORTS TO RETURN THE PROPERTY?

10. DO ANY ITEMS REQUIRE DEMILITARIZATION OR SPECIAL PROCESSING (sensitive items)?

SECTION III - TERMINATION INVENTORY

17. DID WORK STOP PROMPTLY UPON RECEIPT OF THE TERMINATION NOTICE?

DATE OF NOTICE:

18a. DO THE QUANTITIES OF MATERIAL EXCEED THE AMOUNTS THAT WOULD HAVE BEEN REGARDED TO COMPLETE THE TERMINATED PORTION OF THE CONTRACT?

18b. CAN THE ITEMS OF TERMINATION INVENTORY BE USED ON THE CONTINUING PORTION OF THE CONTRACT?

19. ARE ALL ITEMS AND QUANTITIES ALLOCABLE TO THE TERMINATED PORTION OF THE CONTRACT OR ORDER?

20. DOES THE INVENTORY INCLUDE REJECTS? IF YES, EXPLAIN

SPECIAL LINES THAT ENTER FROM CONTRACT ESTIMATED COST OF REWORKING REJECTS ON SPECIFIC LINE ITEM BASIS.

21a. HAVE COMPLETED ARTICLES BEEN INSPECTED AS TO QUALITY AND CONFORMANCE TO SPECIFICATIONS?

21b. DO THE COMPLETED ITEMS INSPECTED CONFORM TO CONTRACT SPECIFICATIONS?

22. FOR WORK IN PROCESS, IS THE PERCENTAGE OF COMPLETION ACCURATE?

24. SIGNATURE OF REQUESTER

The above information is based on a physical verification of inventory listed under Item 5.

NAME AND TITLE

SIGNED BY VERIFIER

DATE

AUTHORIZED FOR LOCAL REPRODUCTION


Prepared by USAF R&D (FAR 52.21423)

(69 FR 17752, Apr. 5, 2004)

513
INVENTORY VERIFICATION SURVEY

(See FAR 48.506-3)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Register (OMB), OMB Control Number, Federal Acquisition Policy Division, U.S. General Services Administration, Washington, DC 20402.

SECTION I - GENERAL
1. FROM (Include ZIP Code)
2. CONTRACT NUMBER
3. TO: (Include ZIP Code)
4. CONTRACT/SUBCONTRACTOR
5. SCHEDULES OF INVENTORY TO BE INSPECTED AND VERIFIED
   SF 1426 pages through $  
   SF 1426 pages through $  
   SF 1406 pages through $  

SECTION II - TECHNICAL VERIFICATION
6. IS PROPERTY LISTED ON THE INVENTORY SCHEDULES ON HAND AND IN THE QUANTITIES INDICATED? * 
7. IS THE PROPERTY CORRECTLY DESCRIBED ON THE INVENTORY SCHEDULES? *  
8. IS THE PROPERTY SEPARATED OR ADEQUATELY PROTECTED? *  
9. IS THE PROPERTY PROPERLY TAGGED? * 
10. ARE THE CONDITION CODES ACCURATE? * 
11. ARE THE ITEMS LISTED ON SF 1426 CORRECTLY CATEGORIZED AS SPECIAL, TOOLING OR SPECIAL TEST EQUIPMENT? * 
12. ARE THE WEIGHTS OF THE ITEMS RECOMMENDED AS SCRAP APPROXIMATELY CORRECT? *  
   IF WEIGHTS ARE NOT SHOWN, GIVE ESTIMATE OF WEIGHT BY BASIC MATERIAL CONTENT. * 
13. DO THE ITEMS APPEAR TO HAVE COMMERCIAL VALUE OTHER THAN SCRAP? * 
14. ARE THE ITEMS AGENCY-PECULIAR? * 
15. DO ANY ITEMS REQUIRE SPECIAL PROCESSING (e.g., permanent marking, hazardous or sensitive items, etc.)? * 
16. ARE COMMON ITEMS INCLUDED ON THE INVENTORY SCHEDULE? * 

SECTION III - TERMINATION INVENTORY
17. DID WORK STOP PROMPTLY UPON RECEIPT OF THE TERMINATION NOTICE? *  
18. DO QUANTITIES OF MATERIAL EXCEED THE AMOUNTS THAT WOULD HAVE BEEN REQUIRED TO COMPLETE THE TERMINATED PORTION OF THE CONTRACT? *  
19. CAN THE ITEMS OF TERMINATION INVENTORY BE USED ON THE CONTINUING PORTION OF THE CONTRACT? *  
20. ARE ALL RECEIPTS AND QUANTITIES ACCURATE TO THE TERMINATION PORTION OF THIS CONTRACT OR ORDER? * 
21. HAVE COMPLETED ARTICLES BEEN INSPECTED AS TO QUALITY AND CONFORMANCE TO SPECIFICATIONS? *  
22. DO THE COMPLETED ITEMS INSPECTED CONFORM TO CONTRACT SPECIFICATIONS? * 
23. DO OTHER THAN COMPLETED ITEMS CONFORM WITH TECHNICAL REQUIREMENTS OF THE CONTRACT OR ORDER? * 

23. SIGNATURE OF REQUESTER

INVENTORY VERIFICATION

The above information based on physical verification of inventory listed under item 5.

24. NAME AND TITLE
25. SIGNATURE OF VERIFIER
26. DATE

AUTHORIZED FOR LOCAL REPRODUCTION

PREVIOUS EDITION NOT USED

STANDARD FORM 1423 (REV 12-99)

Prescribed by GSA/FAA FAR CFAR 53.2450-1

[82 FR 249, Jan. 2, 1997]
Federal Acquisition Regulation 53.301–1427

53.301–1427  Inventory Disposal Report.

<table>
<thead>
<tr>
<th>INVENTORY DISPOSAL REPORT (See FAR 49.606)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLANT CLEARANCE CASE NUMBER</td>
</tr>
</tbody>
</table>

| 1. DATE PLANT CLEARANCE CASE OPENED       |
| 2. DATE PLANT CLEARANCE CASE CLOSED       |
| 3. NUMBER OF DAYS BETWEEN OPENING AND CLOSING |

| 4. NAME AND ADDRESS OF CONTRACTOR/SUBCONTRACTOR (Include ZIP Code) |
| 5. IF SUBCONTRACTOR, STATE NAME AND ADDRESS OF PRIME CONTRACTOR (Include ZIP Code) |

| 6. LOCATION OF PROPERTY (City and State) |
| 7. CONTRACT NUMBER |
| 8. DOCKET NUMBER (Termination only) |
| 9. SUBCONTRACT NUMBER |
| 10. CONTRACTOR REFERENCE NUMBER |

<table>
<thead>
<tr>
<th>DISPOSITION OF PROPERTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>ITEM DESCRIPTION</td>
</tr>
<tr>
<td>11. TOTAL INVENTORY AS SUBMITTED</td>
</tr>
<tr>
<td>12. ADJUSTMENTS (Pricing errors, shortages, etc.)</td>
</tr>
<tr>
<td>13. ADJUSTED INVENTORY (Line 11 + or - Line 12)</td>
</tr>
<tr>
<td>14. PURCHASE OR RETENTION AT COST</td>
</tr>
<tr>
<td>15. RETURN TO SUPPLIERS (Net Proceeds)</td>
</tr>
<tr>
<td>16. REDISTRIBUTIONS</td>
</tr>
<tr>
<td>A. WITHIN OWNING AGENCY</td>
</tr>
<tr>
<td>B. OTHER AGENCIES</td>
</tr>
<tr>
<td>TOTAL</td>
</tr>
<tr>
<td>17. DONATIONS</td>
</tr>
<tr>
<td>18. SALES</td>
</tr>
<tr>
<td>19. SALES - SCRAP PROCEEDS TO OVERHEAD</td>
</tr>
<tr>
<td>20.</td>
</tr>
<tr>
<td>21.</td>
</tr>
<tr>
<td>22. TOTAL PROCEEDS CREDIT (Total Lines 14, 15, and 18)</td>
</tr>
<tr>
<td>23. ABANDONED</td>
</tr>
<tr>
<td>24. DESTROYED/ABANDONED</td>
</tr>
<tr>
<td>25. DESTROYED/SCRAPED</td>
</tr>
<tr>
<td>26. OTHER (Explain in Item 25, Remarks)</td>
</tr>
<tr>
<td>27. TOTAL DISPOSITIONS</td>
</tr>
<tr>
<td>REMARKS (Identify contract number in which proceeds were applied, or disbursing office where proceeds were deposited)</td>
</tr>
</tbody>
</table>

To the best of my knowledge, disposition of all property on this case has been effected in accordance with existing regulations, all property has been accounted for and all disposal credits properly applied.

CONTRACT ADMINISTRATION OFFICE (Authorized signature and title)  DATE

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 1424 (REV. 8/2004)

Prepared by USA - FAR 49 CFR 53.24508

(69 FR 17753, Apr. 5, 2004)

53.301–1427 Standard Form 1427, Inventory Schedule A—Construction Sheet (Metals in Mill Product Form).
<table>
<thead>
<tr>
<th>FOR USE OF CONTRACTING AGENCY ONLY</th>
<th>ITEM NO.</th>
<th>DESCRIPTION</th>
<th>SPECIFICATIONS, AND ALLOY OR OTHER DESIGNATIONS IN THE SPECIFICATION</th>
<th>DIMENSIONS</th>
<th>COST</th>
<th>CONTRACTORS OFFER</th>
<th>FOR USE OF CONTRACTING AGENCY ONLY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(a)</td>
<td></td>
<td></td>
<td>(b)</td>
<td>(c)</td>
<td>(d)</td>
<td>(e)</td>
</tr>
<tr>
<td></td>
<td>(b)</td>
<td>FORM, SHAPE, ROLLING TREATMENT</td>
<td></td>
<td>(e)</td>
<td>(f)</td>
<td>(g)</td>
<td>(h)</td>
</tr>
<tr>
<td></td>
<td>(c)</td>
<td>HEAT TREATMENT, TEMPER, HARDNESS, FINISH, ETC.</td>
<td></td>
<td>(f)</td>
<td>(g)</td>
<td>(h)</td>
<td>(i)</td>
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<tr>
<td></td>
<td>(d)</td>
<td>THICKNESS</td>
<td></td>
<td>(g)</td>
<td>(h)</td>
<td>(i)</td>
<td>(j)</td>
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<td></td>
<td>(e)</td>
<td>WIDTH</td>
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<td>(h)</td>
<td>(i)</td>
<td>(j)</td>
<td>(k)</td>
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<tr>
<td></td>
<td>(f)</td>
<td>LENGTH</td>
<td></td>
<td>(i)</td>
<td>(j)</td>
<td>(k)</td>
<td>(l)</td>
</tr>
<tr>
<td></td>
<td>(g)</td>
<td>QUANTITY</td>
<td></td>
<td>(j)</td>
<td>(k)</td>
<td>(l)</td>
<td>(m)</td>
</tr>
<tr>
<td></td>
<td>(h)</td>
<td>UNIT OF MEASURE</td>
<td></td>
<td>(k)</td>
<td>(l)</td>
<td>(m)</td>
<td>(n)</td>
</tr>
<tr>
<td></td>
<td>(i)</td>
<td>COST</td>
<td></td>
<td>(l)</td>
<td>(m)</td>
<td>(n)</td>
<td>(o)</td>
</tr>
<tr>
<td></td>
<td>(j)</td>
<td>CONTRACTORS OFFER</td>
<td></td>
<td>(m)</td>
<td>(n)</td>
<td>(o)</td>
<td>(p)</td>
</tr>
<tr>
<td></td>
<td>(k)</td>
<td>FOR USE OF CONTRACTING AGENCY ONLY</td>
<td></td>
<td>(n)</td>
<td>(o)</td>
<td>(p)</td>
<td>(q)</td>
</tr>
</tbody>
</table>
53.301–1428  Inventory Disposal Schedule.
INSTRUCTIONS

The Contractor shall submit all schedules to the Plant Clearance Officer.

Manual submissions. Prepare a separate schedule for items in each property classification (block 17) and a separate schedule for scrap. Submit an original and 2 copies of each scrap schedule and continuation sheet (SF 1429). For other schedules, an original and 7 copies are required.

Electronic submissions. Group all items of the same property classification. Submit separate schedules for scrap.

General instructions.

BLOCKS 1, 2 & 4 - Self-explanatory.

BLOCK 3 - PRIME CONTRACT NO. (For contract modifications and BOAs). If the property applies solely to one contract modification indicate the modification number after the contract number. For task orders and orders under basic ordering agreements, enter the contract number or BOA number followed by the order number under which the property is accountable.

BLOCK 5 - CONTRACT TYPE. Use one of the following codes:

J - Fixed-Price
O - Other
S - Cost-Reimbursement
Y - Time-and-Material
Z - Labor-Hour
9 - Task Order Contracts and Orders under Basic Ordering Agreements (BOAs)

BLOCKS 6 - 8 - Self-explanatory.

BLOCKS 9a and 10a - CAGE CODE. Enter the Commercial and Government Entity code when applicable.

BLOCKS 9b-d, 10b-d, and 11a-13 - Self-explanatory.

BLOCK 14 - ITEM DESCRIPTION. Describe each item in sufficient detail to permit the Government to determine its appropriate disposition. Scrap may be described as a lot including metal content, estimated weight and estimated acquisition cost. For all other property, provide the information required by FAR 52.245 - 1 (F)(1)(i). List the national stock number (NSN) first. For the following, also provide:

- Special tooling and special test equipment. Identify each part number with which the item is used.
- Computers, components thereof, peripheral and related equipment. The manufacturer's name, model and serial number, and date manufactured.
- Work in process. The estimated percentage of completion.
- Precious metals. The metal type and estimated weight.
- Hazardous material or property contaminated with hazardous material. The type of hazardous material.

Metals in mill product form. The form, shape, treatments, hardness, temper, specification (commercial or Government), and dimensions (thickness, width, and length).

BLOCK 15 - GOVERNMENT FURNISHED/CONTRACTOR ACQUIRED. Per line item, enter one of the following:

GF - Government furnished
CA - Contractor acquired

BLOCK 16 - DML CODE. (Dismantlement code). If applicable, enter the code specified in DOD 4160.21-M-1.

BLOCK 17 - PROPERTY CLASSIFICATION. Use one of the following classifications for each line item:

EQ - Equipment
M - Material
STE - Special test equipment
ST - Special tooling

In addition, when applicable, list one of the following sub classifications for each line item below the property classification:

COM - Computers, peripherals, etc.
AAE - Arms, ammunition and explosives
PM - Precious metals
HAZ - Hazardous materials
ME - Metals in mill product form
WIP - Work in process
CL - Classified

BLOCK 18 - Self-Explanatory.

BLOCK 19 - CONDITION CODE. Assign one of the following codes to each item:

Code 1. Property which is in new condition or unused condition and can be used immediately without modifications or repairs.

Code 4. Property which shows some wear, but can be used without significant repair.

Code 7. Property which is unusable in its current condition but can be economically repaired.

Code X. Property which has value in excess of its basic material content, but repair or rehabilitation is impractical and/or uneconomical.

Code S. Property has no value except for its basic material content.

BLOCKS 20 - 22 - Self-explanatory.

BLOCK 23 - CONTRACTOR'S OFFER. The Contractor's offer to purchase the item if it survives screening.

STANDARD FORM 1428 (REV. 6/2007) BACK

|-------------|-----------------------|----------------------|------|-----------------------------|---------------------------------------------------|-------------------|-------------|----------------------|--------|---------------------|

PUBLIC REPORTING BURDEN FOR THIS COLLECTION OF INFORMATION IS ESTIMATED AT 1 HOUR PER RESPONSE, INCLUDING THE TIME FOR READING INSTRUCTIONS, SEARCHING EXISTING DATA SOURCES, GATHERING AND MAINTAINING THE DATA NEEDED, AND COMPLETING AND REVIEWING THE COLLECTION OF INFORMATION. SEND COMMENTS REGARDING THIS BURDEN ESTIMATE OR ANY OTHER ASPECT OF THIS COLLECTION OF INFORMATION, INCLUDING SUGGESTIONS FOR REDUCING THIS BURDEN, TO THE FAR SECRETARIAT (MVA), REGULATORY AND FEDERAL ASSISTANCE PUBLICATIONS DIVISION, GSA, WASHINGTON, DC 20405.
## Settlement Proposal (Inventory Basis)

### Section I: Status of Contract or Order at Effective Date of Termination

<table>
<thead>
<tr>
<th>Products Covered by Terminated Contract or Purchase Order</th>
<th>Previously Shipped and invoiced</th>
<th>On Hand</th>
<th>Finished</th>
<th>Unfinished or Not commenced</th>
<th>Total Covered by Contract or Order</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Quantity</td>
<td>0</td>
<td></td>
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<td>Quantity</td>
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</table>

### Section II: Proposed Settlement

<table>
<thead>
<tr>
<th>No.</th>
<th>Item</th>
<th>Rate Creditated ($) and (#)</th>
<th>Any other description</th>
<th>Decrease by this proposal</th>
<th>Total Proposed to Date ($)</th>
<th>For Use of Contracting Agency Only ($)</th>
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<tbody>
<tr>
<td>1</td>
<td>Metals</td>
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<td>2</td>
<td>Raw Materials (other than metals)</td>
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<td>3</td>
<td>Purchased Parts</td>
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</tr>
<tr>
<td>4</td>
<td>Finished Components</td>
<td></td>
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</tr>
<tr>
<td>5</td>
<td>Miscellaneous Inventory</td>
<td></td>
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</tr>
<tr>
<td>6</td>
<td>Work-in-Process</td>
<td></td>
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</tr>
<tr>
<td>7</td>
<td>Special Tooling and Special Test Equipment</td>
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</tr>
<tr>
<td>8</td>
<td>Other Costs (from Schedule B)</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>9</td>
<td>General and Administrative Expenses (from Schedule C)</td>
<td></td>
<td></td>
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<tr>
<td>10</td>
<td>Total (Items 1 to 9 inclusive)</td>
<td></td>
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</tr>
<tr>
<td>11</td>
<td>Profit (line in Schedule D)</td>
<td></td>
<td></td>
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<tr>
<td>12</td>
<td>Settlement Expenses (from Schedule E)</td>
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</tr>
<tr>
<td>13</td>
<td>Total (Items 10 to 12 inclusive)</td>
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<td></td>
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<tr>
<td>14</td>
<td>Settlements with Subcontractors (from Schedule F)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>15</td>
<td>Acceptable Finished Product</td>
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<tr>
<td>16</td>
<td>Gross Proposed Settlement (Items 13 thru 15)</td>
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<tr>
<td>17</td>
<td>Disposal and Other Credits (from Schedule G)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Advance, Progress &amp; Partial Payments (from Schedule H)</td>
<td></td>
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<tr>
<td>19</td>
<td>Net Payment Requested (Item 16 less 17)</td>
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<td>20</td>
<td>Total (Items 18 thru 19)</td>
<td></td>
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</tr>
</tbody>
</table>

(When the space provided for any information is insufficient, continue on a separate sheet.)
**Federal Acquisition Regulation**

**53.301-1435**

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**SCHEDULE A - ANALYSIS OF INVENTORY COST (Items 4 and 6)**

<table>
<thead>
<tr>
<th>Finished</th>
<th>Total Direct Labor</th>
<th>Total Direct Materials</th>
<th>Total Indirect Expenses</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Components</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Work-in-Progress</td>
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</tbody>
</table>

**NOTE:** Individual items of small amounts may be grouped into a single entry in Schedules B, C, D, and E.

---

**SCHEDULE B - OTHER COSTS (Item 8)**

<table>
<thead>
<tr>
<th>Item</th>
<th>Explanation</th>
<th>Amount</th>
<th>For Use of Contracting Agency Only</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

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**SCHEDULE C - GENERAL AND ADMINISTRATIVE EXPENSES (Item 9)**

<table>
<thead>
<tr>
<th>Detail of Expenses</th>
<th>Amount</th>
<th>For Use of Contracting Agency Only</th>
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</thead>
<tbody>
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**SCHEDULE D - PROFIT (Item 11)**

<table>
<thead>
<tr>
<th>Explanation</th>
<th>Amount</th>
<th>For Use of Contracting Agency Only</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

*(Where the space provided for any information is insufficient, continue on a separate sheet.)*

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**STANDARD FORM 1435 REV. 9-97 PAGE 2**

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521
### Schedule E - Settlement Expenses (Item 12)

<table>
<thead>
<tr>
<th>ITEM</th>
<th>EXPLANATION</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

### Schedule F - Settlements with Immediate Subcontractors and Suppliers (Item 14)

<table>
<thead>
<tr>
<th>NAME AND ADDRESS OF SUBCONTRACTOR</th>
<th>BRIEF DESCRIPTION OF PRODUCT CANCELED</th>
<th>AMOUNT OF SETTLEMENT</th>
<th>FOR USE OF CONTRACTING AGENCY ONLY</th>
</tr>
</thead>
<tbody>
<tr>
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### Schedule G - Disposal and Other Credits (Item 17)

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>AMOUNT</th>
<th>FOR USE OF CONTRACTING AGENCY ONLY</th>
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</tbody>
</table>

(If practicable, show separately amount of disposal credits applicable to acceptable finished product included in item 15.)
(Where the space provided for any information is insufficient, continue on a separate sheet.)
CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 14) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.403, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.406-2 and 15.408 Table 15-2).

## 53.301–1436 Settlement Proposal (Total Cost Basis)

**SETTLEMENT PROPOSAL (TOTAL COST BASIS)**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>DIRECT MATERIAL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>DIRECT LABOR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>INDIRECT FACTORY EXPENSE (from Schedule A)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT (SF 1428)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>OTHER COSTS (from Schedule B)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>GENERAL AND ADMINISTRATIVE EXPENSES (from Schedule C)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>TOTAL COSTS (items 1 thru 6)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>PROFIT (Expansions on Schedule D)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>TOTAL (items 7 and 8)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>DEDUCT FINISHED PRODUCT INVOICED OR TO BE INVOICED*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>TOTAL (item 9 less item 10)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>SETTLEMENT EXPENSES (from Schedule E)</td>
<td></td>
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</tr>
<tr>
<td>13</td>
<td>TOTAL (items 11 and 12)</td>
<td></td>
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<td>14</td>
<td>SETTLEMENTS WITH SUBCONTRACTORS (from Schedule F)</td>
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<tr>
<td>15</td>
<td>DISPOSAL AND OTHER CREDITS (from Schedule G)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>NET PROPOSED SETTLEMENT (item 15 less 16)</td>
<td></td>
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</tr>
<tr>
<td>17</td>
<td>ADVANCE, PROGRESS &amp; PARTIAL PAYMENTS (from Schedule H)</td>
<td></td>
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</tr>
<tr>
<td>18</td>
<td>NET PAYMENT REQUESTED (item 17 less 18)</td>
<td></td>
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</tbody>
</table>

*Column 9, Section 1, should only be used in the event of a partial termination, in which the total cost reported in Section II should be accumulated to date of completion of the contracted portion of the contract and the deduction for finished product (item 10, Section I) should be the contract price of finished product in Column B, C, and D.

**NOTE:** Include schedule (SF 1428) for allocable inventories on hand at date of termination (see 49.206).

(When the space provided for any information is insufficient, continue on a separate sheet.)

**STANDARD FORM 1436 REV. 1/2004**

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524
### Schedule A - Indirect Factory Expense (Item 3)

<table>
<thead>
<tr>
<th>Detail of Expenses</th>
<th>Method of Allocation</th>
<th>Amount</th>
<th>For Use of Contracting Agency Only</th>
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</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

**Note:** Individual items of small amounts may be grouped into a single entry in Schedules B, C, D, E, and G.

### Schedule B - Other Costs (Item 5)

<table>
<thead>
<tr>
<th>Item</th>
<th>Explanation</th>
<th>Amount</th>
<th>For Use of Contracting Agency Only</th>
</tr>
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<tbody>
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### Schedule C - General and Administrative Expenses (Item 6)

<table>
<thead>
<tr>
<th>Detail of Expenses</th>
<th>Method of Allocation</th>
<th>Amount</th>
<th>For Use of Contracting Agency Only</th>
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</table>

### Schedule D - Profit (Item 8)

<table>
<thead>
<tr>
<th>Explanation</th>
<th>Amount</th>
<th>For Use of Contracting Agency Only</th>
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<tbody>
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(Where the space provided for any information is insufficient, continue on a separate sheet.)
### SCHEDULE E - SETTLEMENT EXPENSES (Item 12)

<table>
<thead>
<tr>
<th>ITEM</th>
<th>EXPLANATION</th>
<th>AMOUNT</th>
<th>FOR USE OF CONTRACTING AGENCY ONLY</th>
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</table>

### SCHEDULE F - SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS (Item 14)

<table>
<thead>
<tr>
<th>NAME AND ADDRESS OF SUBCONTRACTOR</th>
<th>BRIEF DESCRIPTION OF PRODUCT CANCELED</th>
<th>AMOUNT OF SETTLEMENT</th>
<th>FOR USE OF CONTRACTING AGENCY ONLY</th>
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### SCHEDULE G - DISPOSAL AND OTHER CREDITS (Item 16)

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>AMOUNT</th>
<th>FOR USE OF CONTRACTING AGENCY ONLY</th>
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<tbody>
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</tbody>
</table>

(If practicable, show separately amount of disposal credits applicable to acceptable finished product included on SF 1428.)

(Where the space provided for any information is insufficient, continue on a separate sheet.)
Federal Acquisition Regulation 53.301–1436

### SCHEDULE H - ADVANCE, PROGRESS AND PARTIAL PAYMENTS (Item 19)

<table>
<thead>
<tr>
<th>DATE</th>
<th>TYPE OF PAYMENT</th>
<th>AMOUNT</th>
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</thead>
<tbody>
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</tbody>
</table>
| (Where the space provided for any information is insufficient, continue on a separate sheet.)

### CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR’S OWN CHARGES. The proposed settlement exclusive of charges set forth in Item 14(a) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS’ CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors exclusive of proposals filed against these immediate subcontractors by their subcontractors; (2) The settlements on account of immediate subcontractors’ own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (1) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term “subcontractors,” as used above, includes suppliers.

**NOTE:** The Contractor shall, under conditions stated in FAR 15.403, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.406-2 and 15.408 Table 15-2).

<table>
<thead>
<tr>
<th>NAME OF CONTRACTOR</th>
<th>(Signature of authorized official)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>TITLE</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NAME OF SUPERVISING ACCOUNTING OFFICIAL</th>
<th>TITLE</th>
</tr>
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</table>

STANDARD FORM 1436 (REV. 5/2006) PAGE 4

53.301–1437 Settlement Proposal for Cost-Reimbursement Type Contracts.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>TOTAL PREVIOUSLY SUBMITTED</th>
<th>INCREASE OR DECREASE BY THIS PROPOSAL</th>
<th>TOTAL SUBMITTED TO DATE</th>
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</thead>
<tbody>
<tr>
<td>1. DIRECT MATERIAL</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>2. DIRECT LABOR</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>3. INDIRECT FACTORY EXPENSE</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>4. SPECIAL TOOLS AND SPECIAL TEST EQUIPMENT</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>5. OTHER COSTS</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>6. GENERAL AND ADMINISTRATIVE EXPENSE</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>7. TOTAL COST (items 1 thru 6)</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>8. FEE</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>9. SETTLEMENT EXPENSES</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>10. SETTLEMENTS WITH SUBCONTRACTORS</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>11. TOTAL PROPOSED SETTLEMENT (items 7 thru 10)</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>12. DISPOSAL AND OTHER CREDITS</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>13. NET PROPOSED SETTLEMENT (items 11 less 12)</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>14. PRIOR PAYMENTS TO CONTRACTOR</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>15. NET PAYMENT REQUESTED (items 13 less 14)</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in item 10) and supporting schedules and explanations have been prepared from the books of account and records of the contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors' own charges are fair and reasonable; the charges are allocable to the terminated portion of this contract and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all of its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt the reasonableness of the settlements with more remote subcontractors or suppliers through which payments may reasonably be traced.

NOTE: The Contractor shall, under conditions stated in FAR 15.403, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.406-2 and 15.408 Table 15-2).

NAME OF CONTRACTOR

SIGNATURE (Signature of authorized official)

TITLE

DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL

TITLE

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STANDARD FORM 1437 (REV. 9-97)

PROSCRIBED BY GSA - FAR 48 CFR 53.24944(H)

Federal Acquisition Regulation 53.301–1438

53.301–1438 Settlement Proposal (Short Form).

<table>
<thead>
<tr>
<th>SETTLEMENT PROPOSAL (SHORT FORM)</th>
<th>OMB No.: 9000–0012</th>
<th>Expires: 08/30/2004</th>
</tr>
</thead>
</table>

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (OVA), Regulatory and Federal Assistance Publications Division, GSA, Washington, DC 20405.

1. This proposal is for use by a Prime Contractor or Subcontractor in Settlement of a Fixed Price Terminated Contract when Total Charges Claimed Are Less Than $100,000.

2. The proposal is to be signed by the Contractor who sent notice of termination.

3. This proposal is to be used to settle a portion of the contract in case of early termination.

4. The proposal must be submitted within 30 days of receipt of the notice of termination.

5. The proposal must include all charges allocable to the terminated portion of the contract.

6. The proposal must be signed by the Company (Prime or Subcontractor) and the Contractor who sent notice of termination.

7. The proposal must include a list of all charges allocable to the terminated portion of the contract, including any credits.

8. The proposal must be submitted to the Contracting Officer within 30 days of receipt of the notice of termination.

9. The proposal must include a brief explanation of how the proposal was arrived at.

SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

<table>
<thead>
<tr>
<th>PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER</th>
<th>FINISHED PREVIOUSLY SHIPPED AND INVOICED</th>
<th>UNFINISHED OR NOT COMPLETED</th>
<th>TOTAL COVERED BY CONTRACT OR ORDER</th>
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SECTION II - PROPOSED SETTLEMENT

<table>
<thead>
<tr>
<th>NO.</th>
<th>ITEM</th>
<th>AMOUNT OF CHARGE ($)</th>
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<tbody>
<tr>
<td>1</td>
<td>CHARGE FOR ACCEPTABLE FINISHED PRODUCT NOT COVERED BY INVOICING (Item SF 142B)</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>CHARGE FOR WORK IN PROGRESS, RAW MATERIAL, ETC., ON HAND (Item SF 142B)</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>OTHER CHARGES INCLUDING PROFIT AND SETTLEMENT EXPENSES</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>CHARGES FOR SETTLERS/S WITH SUBCONTRACTORS</td>
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</tr>
<tr>
<td>5</td>
<td>GROSS PROPOSED SETTLEMENT (Sum of Items 1 thru 4)</td>
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<tr>
<td>6</td>
<td>DISPOSAL AND OTHER CREDITS (from SF 1424, Item 27, Col. 3)</td>
<td></td>
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<tr>
<td>7</td>
<td>NET PROPOSED SETTLEMENT (Item 5 less 6)</td>
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<tr>
<td>8</td>
<td>ADVANCE, PROGRESS, AND PARTIAL PAYMENTS</td>
<td></td>
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<tr>
<td>9</td>
<td>NET PAYMENT REQUESTED (Item 7 less 8)</td>
<td></td>
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</tbody>
</table>

List your inventory on SF 1424 and attach a copy thereto. Retain for the applicable period specified in the prime contract all papers and records relating to this proposal for future examination.

Give a brief explanation of how you arrived at the amounts shown in Items 3, 4, 6, and 7.

I Certify that the above proposed settlement includes only charges allocable to the terminated portion of the contract or purchase order, that the total charges (Item 5) and the disposal credits (Item 6) are fair and reasonable, and that this proposal has been prepared with knowledge that it will, or may, be used directly or indirectly as a basis for reimbursement under a settlement proposal(s) against agencies of the United States.

Name of your company: [Signature of authorized official]

Title: [Date]

Authorized for Local Reproduction: [Standard Form 1438 Rev. E (2004)]

Previous edition is not valid.
INSTRUCTIONS

1. This settlement proposal should be submitted to the contracting officer, if you are a prime contractor, or to your customer, if you are a subcontractor. The term contract as used hereinafter includes a subcontract or a purchase order.

2. Proposals that would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract should be consolidated wherever possible, and must not be divided in such a way as to bring them below $10,000.

3. You should review any aspects of your contract relating to termination and consult your customer or contracting officer for further information. Government regulations pertaining to the basis for determining a fair and reasonable termination settlement are contained in Part 49 of the Federal Acquisition Regulation. Your proposal for fair compensation should be prepared on the basis of the costs shown by your accounting records. Where your costs are not so shown, you may use any reasonable basis for estimating your costs which will provide for fair compensation for the preparations made and work done for the terminated portion of the contract, including a reasonable profit on such preparation and work.

4. Generally your settlement proposal may include under Items 2, 3, and 4, the following:
   a. COSTS - Costs incurred which are reasonably necessary and are properly allocable to the terminated portion of your contract under recognized commercial accounting practices, including direct and indirect manufacturing, selling and distribution, administrative, and other costs and expenses incurred.
   b. SETTLEMENT WITH SUBCONTRACTORS - Reasonable settlements of proposals of subcontractors allocable to the terminated portion of the subcontract. Copies of such settlements will be attached hereto.
   c. SETTLEMENT EXPENSES - Reasonable costs of protecting and preserving termination inventory in your possession and preparing your proposal.
   d. PROFIT - A reasonable profit with respect to the preparations you have made and work you have actually done for the terminated portion of your contract. No profit should be included for work which has not been done, nor shall profit be included for settlement expenses, or for settlement with subcontractors.

5. If you use this form, your total charges being proposed (line 5), must be less than $10,000. The Government has the right to examine your books and records relative to this proposal, and if you are a subcontractor, your customer must be satisfied with your proposal.

[88 FR 17762, Apr. 5, 2004]
Federal Acquisition Regulation

53.301-1439  Schedule of Accounting Information.

<table>
<thead>
<tr>
<th>SCHEDULE OF ACCOUNTING INFORMATION</th>
<th>FORM APPROVED OMB NO.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>8000-0012</td>
</tr>
</tbody>
</table>

This proposal applies to (check one): [ ] Prime Contract with [ ] Subcontract on

Prime Contract with [ ] Subcontract on Purchase Order


Contractor who sent notice of termination [ ] City and State (Include Zip Code)

Name and address (Include Zip Code) [ ] Name of Government Agency


Effective Date of Termination

1. Individual in your organization from whom additional information may be requested on questions relating to accounting matters and property disposal.

Name [ ] Title

Telephone No. [ ] Title

Telephone No.

Address (Include Zip Code)

Address (Include Zip Code)

Are the accounts of the contractor subject to regular periodic examination by independent public accountants?

[ ] Yes [ ] No (name and address of accountant)

1. Independent accountants, if any, who have reviewed or assisted in the preparation of the attached proposal.

Name [ ] Address (Include Zip Code)

Address (Include Zip Code)

Governmental agencies which have reviewed your accounts in connection with prior settlement proposals during the current and preceding fiscal year.

Name [ ] Address (Include Zip Code)

Address (Include Zip Code)

Have there been any significant deviations from your regular accounting procedures and policies in arriving at the costs set forth in the attached proposal? [ ] Yes [ ] No

Have the detailed cost records used in preparing the proposal controlled by and in agreement with your general books of account?

[ ] Yes [ ] No

1. State nature of accounting for trade and cash discounts earned, rebates, allowances, and volume price adjustments. Are such items excluded from costs proposed?

[ ] Yes [ ] No

(Enter the space above for any information is pertinent. Continue on a separate sheet.)
1. State method of recording and reserving for general engineering and general development expense and engineering and development expense directly applicable to the terminated contract.

2. State type and source of miscellaneous income and credits and manner of recording in the income or the cost accounts such as rental of your facilities to outside parties, etc.

3. Method of allocating general and administrative expense.

4. Are costs and income from change orders segregated from other contract costs and included in "yes" by what method?
   - [ ] Yes
   - [ ] No

5. Method of computing profit shown in the attached proposal and reason for selecting the method used. Foreign estimate of amount or rate of profit in dollars or percent anticipated had the contract been completed.

6. Are settlement expenses applicable to previously terminated contracts included in the attached proposal? If "no," explain.
   - [ ] Yes
   - [ ] No

7. Does this proposal include charges for major inventory items and proposals of subcontractors comparable to this terminated contract and other work of the contractor? If "yes," explain the method used in estimating awards to the terminated portion of the contract.
   - [ ] Yes
   - [ ] No

8. Explain briefly your method of pricing inventories, indicating whether material handling cost has been included in charges for materials.

9. Are any parts, materials, or finished product, known to be defective, included in the inventories? If "yes," explain.
   - [ ] Yes
   - [ ] No

(Where the space provided for any information is insufficient, continue on a separate sheet.)

STANDARD FORM 1499 REV. 7-94 PAGE 2
Federal Acquisition Regulation

53.301–1439

| 17. WERE INVENTORY QUANTITIES BASED ON A PHYSICAL COUNT AS OF THE DATE OF TERMINATION? | YES [ ] NO [ ]

| 18. DESCRIBE BRIEFLY THE NATURE OF UNRECOVERABLE ITEMS INCLUDED IN INVENTORY COSTS AND SUBTRACT A STATED AMOUNT AND EXPLAIN YOUR METHOD OF ALLOCATION USED IN PREPARING THIS PROPOSAL, INCLUDING IF PRACTICABLE, THE RATES USED AND THE PERIOD OF TIME UPON WHICH THEY ARE BASED. |

| 19. STATE GENERAL POLICIES RELATING TO DEPRECIATION AND AMORTIZATION OF FIXED ASSETS, BASED ON UNDERLYING POLICIES. |

| 20. DO THE COSTS SET FORTH IN THE ATTACHED PROPOSAL INCLUDE PROVISIONS FOR ANY RESERVES OTHER THAN DEPRECIATION RESERVES? | YES [ ] NO [ ]

| 21. STATE POLICY OR PROCEDURE FOR RECORDING AND WRITE-OFF OF STARTING LOAD. |

| 22. STATE POLICIES FOR DISTINGUISHING BETWEEN CHARGES TO CAPITALIZED ASSET ACCOUNTS AND TO REPAIR AND MAINTENANCE ACCOUNTS. |

| 23. ARE PERISHABLE TOOLS AND MANUFACTURING SUPPLIES CHARGED DIRECTLY TO CONTRACT COSTS OR INCLUDED IN INDIRECT EXPENSES? |

(Where the space provided for any information is insufficient, continue on a separate sheet.)
53.301-1439

58 CFR Ch. 1 (10-1-09 Edition)

[55 FR 3928, Feb. 5, 1990]
Federal Acquisition Regulation 53.301–1440

53.301–1440 Application for Partial Payment.

### APPLICATION FOR PARTIAL PAYMENT

<table>
<thead>
<tr>
<th>FORM APPROVED DUE NO.</th>
<th>8920–0012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public reporting burden for this collection of information is estimated to average 23 hour per response, including time for reviewing instructions, learning new procedures, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments concerning this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Labor, OMB clearance Office, Washington, D.C. 20210. Do not send completed form to this address. Send completed form to the contracting officer listed on the form.</td>
<td></td>
</tr>
</tbody>
</table>

For use by Prime Contractor or Subcontractor under contracts terminated for the convenience of the Government.

1. APPLICANT
   - APPLICATION APPEARS TO HAVE BEEN CONSIGNED TO CHARGE AGAINST A PRIOR CONTRACT WITH THE GOVERNMENT OR SUBCONTRACT OR PURCHASE ORDER NUMBER
   - STREET ADDRESS
   - NAME
   - ADDRESS LINE 1
   - NAME OF GOVERNMENT AGENCY
   - IF CONTRACTOR HAS GUARANTEED LOANS OR HAS ASSIGNED MONEYS DUE UNDER THE CONTRACT, GIVE THE FOLLOWING:
   - GOVERNMENT FRAME CONTRACT NUMBER
   - NAME AND ADDRESS OF FINANCING INSTITUTION LINE 1
   - CONTRACTOR'S REFERENCE NUMBER
   - NAME AND ADDRESS OF GUARANTOR LINE 1
   - APPLICATION NUMBER UNDER WHICH TERMINATION
   - EFFECTIVE DATE OF TERMINATION
   - DATE OF THIS APPLICATION

### SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

<table>
<thead>
<tr>
<th>PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER</th>
<th>FINISHED</th>
<th>UNFINISHED OR NOT COMMENCED</th>
<th>TOTAL COVERED BY CONTRACT OR ORDER</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>QUANTITY</td>
<td>QUANTITY</td>
<td></td>
</tr>
</tbody>
</table>

### SECTION II - APPLICANT'S OWN TERMINATION CHARGES

<table>
<thead>
<tr>
<th>NO.</th>
<th>ITEM</th>
<th>SETTLEMENT PROPOSAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>ATTACHED</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PREVIOUSLY SUBMITTED</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NO.</th>
<th>ITEM</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ACCEPTABLE FURNISHED PRODUCT (AT CONTRACT PRICE)</td>
<td>$</td>
</tr>
<tr>
<td>2</td>
<td>IN-W-H-PROGRESS</td>
<td>$</td>
</tr>
<tr>
<td>3</td>
<td>RAW MATERIALS, PURCHASED PARTS, AND SUPPLIES</td>
<td>$</td>
</tr>
<tr>
<td>4</td>
<td>GENERAL AND ADMINISTRATIVE EXPENSE</td>
<td>$</td>
</tr>
<tr>
<td>5</td>
<td>TOTAL (SUM OF LINE 1, 2, 3, AND 4)</td>
<td>$</td>
</tr>
<tr>
<td>6</td>
<td>SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT</td>
<td>$</td>
</tr>
<tr>
<td>7</td>
<td>OTHER COSTS</td>
<td>$</td>
</tr>
<tr>
<td>8</td>
<td>SETTLEMENT EXPENSES</td>
<td>$</td>
</tr>
<tr>
<td>9</td>
<td>TOTAL (SUM OF LINE 5, 6, 7, AND 8)</td>
<td>$</td>
</tr>
<tr>
<td>10</td>
<td>SUBCONTRACTOR SETTLEMENTS APPROVED BY CONTRACTING OFFICER OR SETTLED UNDER A DELEGATION OF AUTHORITY AND PAID BY APPLICANT</td>
<td>$</td>
</tr>
</tbody>
</table>

### 11. AMOUNTS RECEIVED

<table>
<thead>
<tr>
<th>NO.</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$</td>
</tr>
<tr>
<td>2</td>
<td>$</td>
</tr>
<tr>
<td>3</td>
<td>$</td>
</tr>
<tr>
<td>4</td>
<td>$</td>
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<tr>
<td>5</td>
<td>$</td>
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<tr>
<td>6</td>
<td>$</td>
</tr>
<tr>
<td>7</td>
<td>$</td>
</tr>
<tr>
<td>8</td>
<td>$</td>
</tr>
<tr>
<td>9</td>
<td>$</td>
</tr>
</tbody>
</table>

AUTHORIZED FOR LOCAL APPROVAL: [Signature]

[55 FR 3033, Feb. 5, 1990]
53.301–1442  Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair).

| SOLICITATION, OFFER, AND AWARD (Construction, Alteration, or Repair) |
|---|---|---|---|---|
| 1. SOLICITATION NO. | 2. TYPE OF SOLICITATION | 3. DATE ISSUED | 4. PAGE OF PAGES |
| | | | |
| IMPORTANT — The "offer" section on the reverse must be fully completed by offeror. |
| A. CONTRACT NO. | B. REQUEST/PURCHASE REQUEST NO. | C. PROJECT NO. |
| | | |
| D. ISSUED BY | E. ADDRESS OFFER TO |
| | |
| F. FOR INFORMATION CALL |
| G. NAME | H. TELEPHONE NO. (Include area code) | I. COLLECT CALL |

SOLICITATION

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "binder.

The Government requires performance of the work described in these documents (file, identifying no., date).

11. The Contractor shall begin performance within _______ calendar days and complete it within _______ calendar days after receiving the award. Notice to proceed. This performance period is ______ mandatory, ______ negotiable. (See _______.)

13A. The Contractor must furnish any required performance and payment bond if "YES," indicate within how many calendar days after award in item 12B.)

13B. CALENDAR DAYS |

YES | NO |

13C. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Sealed offers in original and _______ copies to perform the work required are due at the place specified in Item B by _______ (Date) local time. (Date) If this is a sealed bid solicitation, offers must be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror’s name and address, the solicitation number, and the date and time offers are due.

B. An offer guarantee ______ y ______ y is not required.

C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.

D. Offers providing less than _______ calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.

536
17. The offeror agrees to perform the work required at the place specified below in strict accordance with the terms of this solicitation. If this offer is accepted by the Government in writing within 10 calendar days after the date offers are due, interest on any amounts unpaid greater than the amount required shall be assessed at the rate computed in accordance with section 3207 of Title 31, United States Code. Failure to insert any number means that the offeror accepts the maximum in item 130.

AMOUNTS

18. The offeror agrees to furnish any required performance and payment bonds.

10. ACKNOWLEDGMENT OF AMENDMENTS
(The offeror acknowledges receipt of amendments to the solicitation—give number and date of each):

<table>
<thead>
<tr>
<th>AMENDMENT NO.</th>
<th>DATE</th>
</tr>
</thead>
</table>

21. ITEMS ACCEPTED:

22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA

24. SUBMIT INVOICES TO ADDRESS SHOWN:

<table>
<thead>
<tr>
<th>AMOUNT ADMINISTERED BY</th>
</tr>
</thead>
</table>

25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO

| 10 U.S.C. 2304(m) | 41 U.S.C. 253a1 |

29. CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE

[50 FR 1752, Jan. 11, 1985, and 50 FR 52429, Dec. 23, 1985]
53.301–1443  Standard Form 1443, Contractor's Request for Progress Payment.

<table>
<thead>
<tr>
<th>CONTRACTOR'S REQUEST FOR PROGRESS PAYMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Form Approved</td>
</tr>
</tbody>
</table>

**SECTION I – IDENTIFICATION INFORMATION**

1. TO WHOM ADDRESS OF CONTRACTING OFFICE AUTHORIZING THE CONTRACT (include ZIP Code)
2. NAME AND ADDRESS OF CONTRACTOR (include ZIP Code)
3. SMALL BUSINESS
4. BASIC CONTRACT NUMBER
5. AWARD OR DELIVERY ORDER NUMBER
6. CONTRACT PRICE

**SECTION II – STATEMENT OF COSTS UNDER THIS CONTRACT THROUGH**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Reserved</td>
</tr>
<tr>
<td>2.</td>
<td>Reserved</td>
</tr>
<tr>
<td>3.</td>
<td>Costs Eligible for Progress Payments Under the Progress Payments Clause</td>
</tr>
<tr>
<td>3a.</td>
<td>Total Contract Costs Incurred to Date</td>
</tr>
<tr>
<td>4.</td>
<td>Estimated Cost to Complete</td>
</tr>
<tr>
<td>5.</td>
<td>Total Estimated Cost of Performance</td>
</tr>
<tr>
<td>6.</td>
<td>Item 11 Multiplied by Item 6</td>
</tr>
<tr>
<td>7.</td>
<td>Financing Payments Paid to Subcontractors</td>
</tr>
<tr>
<td>8.</td>
<td>Unliquidated Financing Payments to Subcontractors (Item 14a less 14d)</td>
</tr>
<tr>
<td>9.</td>
<td>Subcontract Financing Payments Approved for Current Payment</td>
</tr>
<tr>
<td>10.</td>
<td>Eligible Subcontractor Financing Payments (Item 14c plus 14e)</td>
</tr>
<tr>
<td>11.</td>
<td>Total Dollar Amount (Item 12 plus 14f)</td>
</tr>
<tr>
<td>12.</td>
<td>Item 13 Multiplied by Item 6</td>
</tr>
<tr>
<td>13.</td>
<td>Lesser of Item 12 or Item 16</td>
</tr>
<tr>
<td>14.</td>
<td>Total Amount of Previous Progress Payments Requested</td>
</tr>
<tr>
<td>15.</td>
<td>Excess/Deficiency Eligible for Progress Payments (Item 17 minus 16)</td>
</tr>
</tbody>
</table>

**SECTION III – COMPUTATION OF LIMITS FOR OUTSTANDING PROGRESS PAYMENTS**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.</td>
<td>Computation of Progress Payment Clause Limitation</td>
</tr>
<tr>
<td>17.</td>
<td>Computation of Progress Payment Clause Limitation</td>
</tr>
<tr>
<td>18.</td>
<td>Computation of Progress Payment Clause Limitation</td>
</tr>
<tr>
<td>19.</td>
<td>Computation of Progress Payment Clause Limitation</td>
</tr>
<tr>
<td>20.</td>
<td>Computation of Progress Payment Clause Limitation</td>
</tr>
<tr>
<td>21.</td>
<td>Computation of Progress Payment Clause Limitation</td>
</tr>
</tbody>
</table>

**DATE**

Certify that
(1) The above statement (with attachments) has been prepared from the books and records of the above-named contractor in accordance with the contract and the instructions herein, and is to the best of my knowledge and belief that it is correct.
(2) To the best of contract performance (as stated in the contract) was paid to the extent shown herein, or where not shown as paid have been paid or will be paid promptly, by the contractor, when due, in the ordinary course of business.
(3) The work referred to above has been performed.
(4) This statement is consistent with the requirements of the contract.
(5) There are no encumbrances (except as reported in writing herein) or on previous progress payment request number ___________ (against the property acquired or produced for or allocated or property charged to the contract which would affect or impair the Government's title).
(6) There has been no material adverse change in the financial condition of the contractor since the contractor's prior set of financial information.
(7) The contractor is in good standing with the Internal Revenue Service.
(8) The contractor has a current federal tax identification number.
(9) The amount of the requested progress payment is in accordance with the contract.
(10) The name and title of the contractor representative preparing this form is ____________________________

NAME AND TITLE OF CONTRACTING OFFICER

SIGNATURE

538
Federal Acquisition Regulation 53.301–1443

INSTRUCTIONS

GENERAL. All dollar amounts must be shown in whole dollars, rounded using a consistent methodology (e.g., always round up, always round down, always round to the nearest dollar). All line item numbers not included in the instructions below are self-explanatory.

SECTION I—IDENTIFICATION INFORMATION. Complete items 1 through 8 in accordance with the following instructions.

item 1. Enter the name and address of the cognizant Contract Administration Office (the office administering the contract).

item 2. FROM CONTRACTOR’S NAME AND ADDRESS/ZIP CODE - Enter the name and mailing address of the contractor. If applicable, the division or the agency performing the contract should be entered immediately following the contractor’s name.

item 3. Enter an “X” in the appropriate block to indicate whether or not the contractor is a small business concern.

item 4. Enter the contract number, including the task or delivery order number if applicable. Progress payment requests under individual orders shall be submitted as if the order constituted a separate contract, unless otherwise specified in this contract (FAR 52.232–18(b)).

item 5. Enter the total contract price in accordance with the following (See FAR 32.501–3).

(1) Under firm-fixed-price contracts, the contract price is the current amount fixed by the contract plus any not-to-exceed amount for any unpriced modifications.

(2) If the contract is indefinite in the subject to economic price adjustment, the contract price is the initial price until modified.

(3) Under a fixed-price contract, the contract price is the target price plus any not-to-exceed amount for any unpriced modifications.

However, if the contractor’s properly incurred costs exceed the target price, the contracting officer may prororate the increase up to the ceiling or maximum price.

(4) Under a cost-type contract, the contract price is the maximum amount obligated by the contract as modified.

(5) Under an unpriced option contract, the contract price is the maximum amount obligated by the order, as modified.

(6) Any portion of the contract specifically providing for reimbursement of costs shall only be excluded from the contract price.

item 6a. PROGRESS PAYMENT RATES - Enter the 2-digit progress payment percentage rate shown in paragraph (b) (1) of the progress payment clause.

item 6b. LIQUIDATION RATE - Enter the current progress payment liquidation rate prescribed in the contract (FAR 52.232–18(b)) using three digits - Example: show 85% as 850; show 72.3% as 723. Decimals between tenths must be rounded up to the next highest tenth (not necessarily the nearest tenth), since rounding down would produce a rate below the minimum rate calculated (FAR 52.232–18(b) (4)).

item 7. DATE OF RETAIL AWARD - Enter the four digit calendar year. Use two digits to indicate the month. Example: Show January 2005 as 0501.

item 8a. PROGRESS PAYMENT REQUEST NUMBER - Enter the number assigned to this request. All requests under a single contract must be numbered consecutively, beginning with 1. Each subsequent request under the same contract must continue in sequence, using the same series of numbers without omission.

item 8b. Enter the date of the request.

SECTION II—STATEMENT OF COSTS UNDER THIS CONTRACT. Data in the space provided in the heading enter the date through which costs have been accumulated from inception for inclusion in this request.

This date is applicable to item entries in Sections II and III.

Cost Basis. In accordance with FAR 52.232–16(a)(1), the basis for progress payments is the contractor’s total costs incurred under this contract, whether or not actually paid, plus financing payments to subcontractors (computed in accordance with FAR 52.232–16(b)).

item 11. Costs eligible for progress payments under the progress payments clause. Compute the eligible costs in accordance with the requirements of FAR 41.102. The costs shall be shown for the period through (4) - Item entries (4). Before item approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the contractor. Before the first item approval, the costs thereof shall not be allowable for purposes of progress payments. (See FAR 52.209–39g) and FAR 52.209–40.

item 12a. Enter the total contract costs incurred to date. If the actual amount is not known, enter the best possible estimate. If an estimate is used, enter “(E)” after the amount.

item 12b. Enter the estimated costs to complete the contract. The contractor shall furnish estimates to complete that have been developed or updated within six months of the date of the progress payment request. The estimates to complete shall represent the contractor’s best estimate of total costs to complete all remaining contract work required under the contract. The estimates shall include sufficient detail to permit Government verification.

item 14a through 14e. Include only financing payments (progress payments, performance-based payments, and commercial item financing) on subcontracts which are in accordance with the requirements of FAR 52.232–16(j). Do not include interim payments under a cost reimbursement contract.

item 14f. Enter only financing payments actually paid.

item 14g. Enter total financing payments recovered from subcontractors.

item 14h. Include the amount of unpaid subcontract progress payment billings which have been approved by the contractor for the current payment in the ordinary course of business.

SECTION III—ADVANCE PAYMENTS/ACCEPTED ITEMS. This Section must be completed only if the contractor has received advance payments against this contract, or if the items have been delivered, invoiced and accepted as of the date indicated in the heading of Section II above.

OUTSIDE WEB PAGES [1] item 21 shall be completed for all progress payment requests where the line 12a amount exceeds the amount on Line 5.

item 20a. Of the costs reported in item 11, compute and enter only costs which are properly allocable to items delivered, invoiced and accepted to the applicable date. In order of preference, these costs are to be computed on the basis of one of the following: (a) The actual unit cost of items delivered, giving proper consideration to the delinquency of the starting point costs or (b) projected unit costs (based on experienced costs plus the estimated cost to complete the contract), where the contractor maintains cost data which will clearly establish the reliability of such estimates.

item 21. Enter total progress payments (accepted items recovered from the contractor on prior billings) and those to be liquidated from billings submitted but not yet paid (monies to be recovered from the contractor on submitted but unpaid billings).

CERTIFICATION Paragraph (f): If no financial information has been provided previously in connection with this contract, insert “NA” in the submission date block and the financial information date block. Otherwise, insert, respectively, the “as of” date of the financial information submitted last and the date of the last submission.

STANDARD FORM 1443 (REV 5/2009) BACK

# Request for Authorization of Additional Classification and Rate

**53.301–1444 Request for Authorization of Additional Classification and Rate.**

<table>
<thead>
<tr>
<th>REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NOTE:</strong> The contractor shall complete Items 3 through 8 and submit the request, in quadruplicate, to the contracting officer.</td>
</tr>
<tr>
<td>1. <strong>TO:</strong> Administrator, Uniformed Standards Administration</td>
</tr>
<tr>
<td>2. <strong>FROM:</strong> Reporting Office</td>
</tr>
<tr>
<td>3. <strong>CONTRACTOR:</strong></td>
</tr>
<tr>
<td>4. <strong>DATE OF REQUEST:</strong></td>
</tr>
<tr>
<td>5. <strong>CONTRACT NUMBER:</strong></td>
</tr>
<tr>
<td>6. <strong>DATE ID OPPOSED (SEAL, BIDDING):</strong></td>
</tr>
<tr>
<td>7. <strong>DATE OF AWARD:</strong></td>
</tr>
<tr>
<td>8. <strong>DATE CONTRACT WORK STARTED:</strong></td>
</tr>
<tr>
<td>9. <strong>DATE OFFICE EXERCISES IF APPLICABLE (SCA CH, 1)</strong></td>
</tr>
<tr>
<td>10. <strong>SUBCONTRACTOR (IF ANY):</strong></td>
</tr>
<tr>
<td>11. <strong>PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED):</strong></td>
</tr>
<tr>
<td>12. <strong>LOCATION (CITY, COUNTY AND STATE):</strong></td>
</tr>
<tr>
<td>13. <strong>IN ORDER TO COMPLETE THE WORK PERIODS FOR THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATES FOR THE INDICATED CLASSIFICATIONS:</strong></td>
</tr>
<tr>
<td>14. <strong>SUMMARY</strong></td>
</tr>
<tr>
<td><strong>NUMBER:</strong></td>
</tr>
<tr>
<td><strong>DATED:</strong></td>
</tr>
<tr>
<td><strong>LIST IN ORDER PROPOSED CLASSIFICATION TITLES, JOB DESCRIPTIONS, RATES, AND RATES FOR PROPOSED CLASSIFICATIONS (SCA CH, 1)</strong></td>
</tr>
<tr>
<td><strong>WAGE RATES:</strong></td>
</tr>
<tr>
<td><strong>FRINGE BENEFITS PAYMENTS:</strong></td>
</tr>
<tr>
<td><strong>DATE RECEIVED OR ATTACH ADDITIONAL SHEET IF NEEDED:</strong></td>
</tr>
</tbody>
</table>

| 14. **SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY):** |
| 15. **SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE:** |

| 16. **SIGNATURE OF EMPLOYEE OR REPRESENTATIVE:** |
| **TITLE:** |
| **CHECK APPROPRIATE BOX:*** |
| **AGREE** |
| **DISAGREE** |

---

*TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE—SEE FAR 23.1516 (SCA) OR FAR 22.405–2 (HHA))*

- The interested parties agree and the contracting officer recommends approval by the wage and hour division. Available information and recommendations are attached.
- The interested parties cannot agree on the proposed classification and wage rate. A determination of the question by the wage and hour division is therefore requested. Available information and recommendations are attached.

| **SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE:** |
| **TITLE AND COMMERCIAL TELEPHONE NO.:** |
| **DATE SUBMITTED:** |

---

*53 FR 4949, Feb. 18, 1988*
**Federal Acquisition Regulation**

### 53.301–1445  SF 1445, Labor Standards Interview.

#### LABOR STANDARDS INTERVIEW

<table>
<thead>
<tr>
<th>CONTRACT NUMBER</th>
<th>EMPLOYEE INFORMATION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>LAST NAME</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NAME OF PRIME CONTRACTOR</th>
<th>STREET ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME OF EMPLOYER</td>
<td>CITY</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SUPERVISOR'S NAME</th>
<th>LAST NAME</th>
<th>FIRST NAME</th>
<th>MI</th>
<th>WORK CLASSIFICATION</th>
<th>WAGE RATE</th>
</tr>
</thead>
</table>

**ACTION**

<table>
<thead>
<tr>
<th>CHECK BELOW</th>
</tr>
</thead>
<tbody>
<tr>
<td>YES</td>
</tr>
</tbody>
</table>

- Do you work over 8 hours per day?
- Do you work over 40 hours per week?
- Are you paid at least time and a half for overtime hours?
- Are you receiving any cash payments for fringe benefits required by the posted wage determination decision?

**WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?**

<table>
<thead>
<tr>
<th>HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOOLS YOU USE</td>
</tr>
<tr>
<td>DATE OF LAST WORK DAY BEFORE INTERVIEW (YYYYMMDD)</td>
</tr>
<tr>
<td>DATE YOU BEGAN WORK ON THIS PROJECT (YYYYMMDD)</td>
</tr>
</tbody>
</table>

**THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE**

<table>
<thead>
<tr>
<th>EMPLOYEE'S SIGNATURE</th>
<th>DATE (YYYYMMDD)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>INTERVIEWER'S SIGNATURE</th>
<th>TYPE OR PRINTED NAME</th>
<th>DATE (YYYYMMDD)</th>
</tr>
</thead>
</table>

**INTERVIEWER'S COMMENTS**

<table>
<thead>
<tr>
<th>WORK EMPLOYEE WAS DOING WHEN INTERVIEWED</th>
<th>ACTION IF EXPLANATION IS NEEDED, USE COMMENTS SECTION</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>IS EMPLOYEE PROPERLY CLASSIFIED AND PAID?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ARE WAGE RATES AND POSTERS DISPLAYED?</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**FOR USE BY PAYROLL CHECKER**

<table>
<thead>
<tr>
<th>IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA?</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ] YES</td>
</tr>
</tbody>
</table>

**COMMENTS**

<table>
<thead>
<tr>
<th>CHECKER</th>
<th>LAST NAME</th>
<th>FIRST NAME</th>
<th>MI</th>
<th>JOB TITLE</th>
</tr>
</thead>
</table>

**AUTHORISED FOR LOCAL REPRODUCTION**

(Signed by author)

STANDARD FORM 1445 (REV. 12/97)

# Labor Standards Investigation Summary Sheet

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Reporting Office</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Contract Number</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Type of Contract</strong></td>
<td>Fixed Price</td>
</tr>
<tr>
<td><strong>Contractor's Name and Address (Include ZIP Code)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Employer's Name and Address (Include ZIP Code) (If other than prime contractor)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Project and Location</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Description of Work</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Basis for Investigation</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Wage Determination Number</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Wage Determination Date</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Nature and Extent of Violation</strong></td>
<td></td>
</tr>
<tr>
<td><strong>No. Employees Involved</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Are Violations Considered Wilful?</strong></td>
<td>Yes</td>
</tr>
<tr>
<td><strong>CopaLand Act Violations</strong></td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Davis-Bacon Act Underpayments</strong></td>
<td></td>
</tr>
<tr>
<td><strong>CHVSSA - Underpayments</strong></td>
<td></td>
</tr>
<tr>
<td><strong>CHVSSA - Law Violations</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Corrective Actions Taken</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Requisition Made</strong></td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Amount of Requisition</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Contractor's Payment Withheld</strong></td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Withheld for Davis-Bacon Violations</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Amount Withheld for Davis-Bacon Violations</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Withheld for CHVSSA - Underpayments</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Amount Withheld for CHVSSA - Underpayments</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Withheld for CHVSSA - Violations</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Amount Withheld for CHVSSA - Violations</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Remarks**

**Prepared By**

<table>
<thead>
<tr>
<th>Date</th>
<th>Title</th>
<th>Signature</th>
</tr>
</thead>
</table>

*Contract Work Hours and Safety Standards Act*

---

[53 FR 4951, Feb. 18, 1988]
Federal Acquisition Regulation

53.301–1447  Solicitation/Contract.

---

**SOLICITATION/CONTRACT**

**BIDDER/OFFER TO COMPLETE BLOCKS 11, 13, 15, 21, 22, & 27**

<table>
<thead>
<tr>
<th>2. CONTRACT NO.</th>
<th>3. AWARD/EFFECTIVE DATE</th>
<th>4. SOLICITATION NUMBER</th>
<th>5. SOLICITATION TYPE</th>
<th>6. SOLICITATION ISSUE DATE</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>7. ISSUED BY</th>
<th>CODE</th>
</tr>
</thead>
<tbody>
<tr>
<td>THIS ACQUISITION IS</td>
<td></td>
</tr>
<tr>
<td>UNRESTRICTED OR</td>
<td></td>
</tr>
<tr>
<td>SET ASIDE:</td>
<td></td>
</tr>
<tr>
<td>SMALL BUSINESS</td>
<td></td>
</tr>
<tr>
<td>EMERGING SMALL BUSINESS</td>
<td></td>
</tr>
<tr>
<td>HUBZONE SMALL BUSINESS</td>
<td></td>
</tr>
<tr>
<td>SERVICE-DISABLED VETERAN OWNED SMALL BUSINESS</td>
<td></td>
</tr>
<tr>
<td>NO COLLECT CALLS</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>8. AGENCY USE</th>
<th></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>9. ITEMS TO BE PURCHASED (BRIEF DESCRIPTION)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>SUPPLIES</td>
<td>SERVICES</td>
</tr>
</tbody>
</table>

| 10. IF OFFER IS ACCEPTED BY THE GOVERNMENT WITHIN | |
| CALENDAR DAYS (90 CALENDAR DAYS UNLESS OFFEROR INSERTS A DIFFERENT PERIOD) FROM THE DATE SET FORTH IN BLOCK 4 ABOVE, THE CONTRACTOR AGREES TO HOLD ITS OFFERED PRICES FIRM FOR THE ITEMS SOLICITED HEREIN AND TO ACCEPT ANY RESULTING CONTRACT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN | |

<table>
<thead>
<tr>
<th>11. ADMINISTERED BY</th>
<th>CODE</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>12. CONTRACTOR OFFER</th>
<th>CODE</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONTRACTOR FACILITY</td>
<td>CODE</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>13. PAYMENT WILL BE MADE BY</th>
<th>CODE</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>14. TELEPHONE NUMBER</th>
<th>15. DUNS NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER</td>
<td></td>
</tr>
<tr>
<td>SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>16. PROMPT PAYMENT DISCOUNT</th>
<th>17. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION</th>
</tr>
</thead>
</table>

|--------------|----------------------------------|-------------|---------|-------------|-----------|

<table>
<thead>
<tr>
<th>24. ACCOUNTING AND APPROPRIATION DATA</th>
<th>25. TOTAL AWARD AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOR GOVERNMENT USE ONLY</td>
<td></td>
</tr>
</tbody>
</table>

| 26. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN. | |
| AWARD OF CONTRACT: YOUR OFFER ON SOLICITATION NUMBER SHOWN IN BLOCK 4 INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN. | |
| SIGNATURE OF OFFEROR/CONTRACTOR | |

<table>
<thead>
<tr>
<th>27. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)</th>
<th>28. DATE SIGNED</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME AND TITLE OF SIGNER (TYPE OR PRINT)</td>
<td>NAME OF CONTRACTING OFFICER</td>
</tr>
</tbody>
</table>

STANDARD FORM 1447 (REV. 12/23/99) 543

AUTHORIZED FOR LOCAL REPRODUCTION
PREVIOUS EDITION NOT USABLE
<table>
<thead>
<tr>
<th>NO RESPONSE FOR REASONS CHECKED</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CANNOT COMPLY WITH SPECIFICATIONS</td>
<td>CANNOT MEET DELIVERY REQUIREMENT</td>
</tr>
<tr>
<td>UNABLE TO IDENTIFY THE ITEM(S)</td>
<td>DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED</td>
</tr>
<tr>
<td>OTHER (Specify)</td>
<td></td>
</tr>
</tbody>
</table>

**We Do**

**We Do Not, Desire to be Retained on the Mailing List for Future Procurement of the Type of Items Involved**

<table>
<thead>
<tr>
<th>NAME AND ADDRESS OF FIRM (Include Zip Code)</th>
<th>SIGNATURE</th>
<th>TYPE OR PRINT NAME AND TITLE OF SIGNER</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

FROM:  

AFFIX STAMP HERE

TO:  

SOLICITATION NO. _______________________

DATE AND LOCAL TIME _______________________

STANDARD FORM 1447 (REV 4/2000) BACK
Federal Acquisition Regulation


<table>
<thead>
<tr>
<th>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS</th>
<th>OFFER TO COMPLETE BLOCKS 12, 17, 23, 24, &amp; 30</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. REQUISITION NUMBER</td>
<td>2. CONTRACT NO.</td>
</tr>
<tr>
<td>3. AWARD/EFFECTIVE DATE</td>
<td>4. ORDER NUMBER</td>
</tr>
<tr>
<td>5. SOLICITATION NUMBER</td>
<td>6. SOLICITATION ISSUE DATE</td>
</tr>
<tr>
<td>7. FOR SOLICITATION INFORMATION CALL:</td>
<td></td>
</tr>
<tr>
<td>8. NAME</td>
<td>9. TELEPHONE NUMBER (No collect code)</td>
</tr>
<tr>
<td>10. THIS ACQUISITION IS</td>
<td></td>
</tr>
<tr>
<td>11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED</td>
<td></td>
</tr>
<tr>
<td>12. DISCOUNT TERMS</td>
<td></td>
</tr>
<tr>
<td>13a. THIS CONTRACT IS A RATED ORDER UNDER DFARS (15 CFR 702)</td>
<td>13b. RATING</td>
</tr>
<tr>
<td>14. METHOD OF SOLICITATION</td>
<td></td>
</tr>
<tr>
<td>15. DELIVER TO</td>
<td></td>
</tr>
<tr>
<td>16. ADMINISTERED BY</td>
<td></td>
</tr>
<tr>
<td>17a. CONTRACTOR/OFFEROR</td>
<td></td>
</tr>
<tr>
<td>18a. PAYMENT WILL BE MADE BY</td>
<td></td>
</tr>
<tr>
<td>18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED</td>
<td></td>
</tr>
<tr>
<td>19. ITEM NO.</td>
<td>20. SCHEDULE OF SUPPLIES/SERVICES</td>
</tr>
<tr>
<td>21. QUANTITY</td>
<td>22. UNIT</td>
</tr>
<tr>
<td>23. UNIT PRICE</td>
<td>24. AMOUNT</td>
</tr>
</tbody>
</table>

17b. CHECK IF REMITTANCE IS DIFFERENT AND畫 SUCH ADDRESS IN OFFER

29. ACCOUNTING AND APPROPRIATION DATA

26. TOTAL AWARD AMOUNT (For Govt. Use Only)

27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-5 AND 52.212-6 ARE ATTACHED. ADDENDA ARE NOT ATTACHED

27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA ARE NOT ATTACHED

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED

29a. AWARD OF CONTRACT: REF. OFFER DATED WITH DATED YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS

30a. SIGNATURE OF OFFEROR/CONTRACTOR

30b. NAME AND TITLE OF SIGNER (Type or print)

30c. DATE SIGNED

31a. NAME OF CONTRACTING OFFICER (Type or print)

31b. DATE SIGNED

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PREVIOUS EDITION IS NOT USABLE

STANDARD FORM 1449 REV. 3/2008
Issued by USA, FAR 148 CFR 53.212
<table>
<thead>
<tr>
<th>Item No.</th>
<th>Schedule of Supplies/Services</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

32d. Quantity in column 21 has been

☑ Received ☐ Inspected ☐ Accepted, and conforms to the contract, except as noted:


d. Signature of Authorized Government Representative

d. Date

d. Printed Name and Title of Authorized Government Representative

d. Mailing Address of Authorized Government Representative

d. Telephone Number of Authorized Government Representative

d. E-mail of Authorized Government Representative

32. Ship Number

34. Voucher Number

35. Amount Verified Correct for

36. Payment

☐ Complete ☐ Partial ☐ Final

38. S/R Account No.

39. S/R Voucher Number

40. Paid By

41a. I certify this account is correct and proper for payment

41b. Signature and title of certifying officer

42a. Received by (name)

42b. Received at (location)

42c. Date received (Y/M/D)

43a. Total containers

(70 FR 14958, Mar. 23, 2005)
Federal Acquisition Regulation

53.302–17 Optional Form 17, Offer Label.

NOTICE TO OFFEROR

1. THIS LABEL MAY ONLY BE USED ON ENVELOPES LARGER THAN 156 mm (6 ⅛ INCHES) IN HEIGHT AND 292 mm (11 ⅓ INCHES) IN LENGTH.

2. Print or type your name and address in the UPPER left corner of the envelope containing your offer.

3. Complete the bottom portion of this form and paste it on the LOWER left corner of the envelope, unless the envelope is 156 mm by 292 mm (6 ⅛ inches by 11 ⅓ inches) or smaller.

OFFER

SOLICITATION NO.

DATE FOR RECEIPT OF OFFERS

TIME FOR RECEIPT OF OFFERS

AM PM

OFFICE DESIGNATED TO RECEIVE OFFERS

[59 FR 67034, Dec. 28, 1994]
53.302–90  Release of Lien on Real Property.

RELEASE OF LIEN ON REAL PROPERTY

Whereas ___________ ________________ ________________, of ________________, ________________, by a bond for the performance of U.S. Government Contract Number ________________, became a surety for the complete and successful performance of said contract, which bond includes a lien upon certain real property further described hereafter, and

Whereas said surety established the said lien upon the following property

and recorded this pledge on ________________________________ ________________________________

in the ________________________________ ________________________________ ________________________________ ________________________________, of ________________________________ ________________________________, and

Whereas, I, ________________________________, being a duly authorized representative of the United States Government as a warranted contracting officer, have determined that the lien is no longer required to ensure further performance of the said Government contract or satisfaction of claims arising therefrom, and

Whereas the surety remains liable to the United States Government for continued performance of the said Government contract and satisfaction of claims pertaining thereto.

Now, therefore, this agreement witnesseth that the Government hereby releases the aforementioned lien.

[Date]       [Signature]

Seal

[55 FR 36522, Sept. 18, 1990]
Federal Acquisition Regulation

53.302–91 Release of Personal Property From Escrow.

RELEASE OF PERSONAL PROPERTY FROM ESCROW

Whereas ___________________________ of ___________________________, by a bond
for the performance of U.S. Government Contract Number __________________________,
became a surety for the complete and successful performance of said contract, and
Whereas said surety has placed certain personal property in escrow

In Account Number __________________________ on deposit

at __________________________ (Name of Financial institution)

located at __________________________ (Address of Financial institution)

Whereas I, __________________________, being a duly authorized
representative of the United States Government as a warranted contracting officer, have
determined that retention in escrow of the following property is no longer required to
ensure further performance of the said Government contract or satisfaction of claims
arising therefrom:

and

Whereas the surety remains liable to the United States Government for the continued
performance of the said Government contract and satisfaction of claims pertaining thereto.

Now, therefore, this agreement witnesseth that the Government hereby releases from
escrow the property listed above, and directs the custodian of the aforementioned escrow
account to deliver the listed property to the surety. If the listed property comprises the
whole of the property placed in escrow in the aforementioned escrow account, the
Government further directs the custodian to close the account and to return all property
therein to the surety, along with any interest accruing which remains after the deduction of
any fees lawfully owed to

__________________________ (Name of Financial institution)

[Date] [Signature]

Seal

AUTHORIZED FOR LOCAL REPRODUCTION

OPTIONAL FORM 8111-00
Prepared by GSA
FAR 140 (CFR 53.228)01

[55 FR 38523, Sept. 18, 1990]
## Optional Form 307, Contract Award

### 1. Contract Number

### 2. Effective Date

### 3. Solicitation Number

### 4. Requisition/Project Number

### 5. Issued By

### 6. Administered By (if other than item 5)

### 7. Name and Address of Contractor

### 8. Payment Will Be Made By

### 9a. Duns Number

### 9b. Taxpayer’s Identification No.

### 10. Submit Invoices 14 days unless otherwise specified to

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Other</td>
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</tr>
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</table>

### 11. Table of Contents

<table>
<thead>
<tr>
<th>No.</th>
<th>Sec.</th>
<th>Description</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>PART I - THE SCHEDULE</td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>I</td>
<td>SOLICITATION/CONTRACT FORM</td>
<td>I</td>
</tr>
<tr>
<td>B</td>
<td>II</td>
<td>SUPPLIES OR SERVICES AND PRICES/COSTS</td>
<td>II</td>
</tr>
<tr>
<td>C</td>
<td>III</td>
<td>DESCRIPTION/SPECS./WORK STATEMENT</td>
<td>III</td>
</tr>
<tr>
<td>D</td>
<td>IV</td>
<td>PACKAGING AND MARKING</td>
<td>IV</td>
</tr>
<tr>
<td>E</td>
<td>V</td>
<td>INSPECTION AND ACCEPTANCE</td>
<td>V</td>
</tr>
<tr>
<td>F</td>
<td>VI</td>
<td>DELIVERIES OR PERFORMANCE</td>
<td>VI</td>
</tr>
<tr>
<td>G</td>
<td>VII</td>
<td>CONTRACT ADMINISTRATION DATA</td>
<td>VII</td>
</tr>
<tr>
<td>H</td>
<td>VIII</td>
<td>SPECIAL CONTRACT REQUIREMENTS</td>
<td>VIII</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PART II - CONTRACT CLAUSES</td>
<td></td>
</tr>
<tr>
<td>I</td>
<td>IX</td>
<td>CONTRACT CLAUSES</td>
<td>IX</td>
</tr>
<tr>
<td>J</td>
<td>X</td>
<td>LIST OF ATTACHMENTS</td>
<td>X</td>
</tr>
<tr>
<td>K</td>
<td>XI</td>
<td>REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS</td>
<td>XI</td>
</tr>
<tr>
<td>L</td>
<td>XII</td>
<td>INSTRUCTIONS, COND..ES, AND NOTICES TO OFFERORS</td>
<td>XII</td>
</tr>
<tr>
<td>M</td>
<td>XIII</td>
<td>EVALUATION FACTORS FOR AWARD</td>
<td>XIII</td>
</tr>
</tbody>
</table>

### 12. Brief Description

### 13. Total Amount of Contract

### 14. Contractor’s Agreement

Contractor agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

### 15. Award

The Government hereby accepts your offer on the solicitation identified in item 3 above as reflected in this award document. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

A. Contractor is required to sign this document and return four copies to the issuing office. (Omit if applicable)

B. Signature of person authorized to sign

C. Name of signer

D. Title of signer

E. Date

### Optional Form 307 (b.81)

Federal Acquisition Regulation  

53.302–308 Optional Form 308, Solicitation and Offer—Negotiated Acquisition.

---

### I. SOLICITATION

| SOLICITATION AND OFFER - NEGOTIATED ACQUISITION |
|---|---|---|
| I. SOLICITATION NUMBER | 2. DATE ISSUED | B. OFFERS DUE BY |
| A. OFFERS VALID FOR 90 DAYS UNLESS A DIFFERENT PERIOD IS ENTERED HERE |
| C. ADDRESS OFFER TO: |
| D. ADDRESS OFFER TO: |
| E. ADDRESS OFFER TO: |
| F. ADDRESS OFFER TO: |

---

### II. FOR INFORMATION CALL (No answer call)

<table>
<thead>
<tr>
<th>A. NAME</th>
<th>B. TELEPHONE</th>
<th>C. E-MAIL ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>AREA CODE</td>
<td>PHONE NUMBER</td>
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</table>

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### III. TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>SEC.</th>
<th>DESCRIPTION</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. SOLICITATION/CONTRACT FORM</td>
<td>I. CONTRACT CLAUSES</td>
<td></td>
</tr>
<tr>
<td>B. SUPPLIES OR SERVICES AND PRICES/COSTS</td>
<td>PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH</td>
<td></td>
</tr>
<tr>
<td>C. DESCRIPTION/SPEC./WORK STATEMENT</td>
<td>J. LIST OF ATTACHMENTS</td>
<td></td>
</tr>
<tr>
<td>D. PACKAGING AND MARKING</td>
<td></td>
<td></td>
</tr>
<tr>
<td>E. INSPECTION AND ACCEPTANCE</td>
<td>K. REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERERS</td>
<td></td>
</tr>
<tr>
<td>F. DELIVERIES OR PERFORMANCE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>G. CONTRACT ADMINISTRATION DATA</td>
<td>L. INSTR. CONS, AND NOTICES TO OFFERORS</td>
<td></td>
</tr>
<tr>
<td>H. SPECIAL CONTRACT REQUIREMENTS</td>
<td>M. EVALUATION FACTORS FOR AWARD</td>
<td></td>
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</tbody>
</table>

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### II. OFFER

The undersigned agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to the resultant contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

<table>
<thead>
<tr>
<th>10A. PERSONS AUTHORIZED TO NEGOTIATE</th>
<th>10B. TITLE</th>
<th>10C. TELEPHONE</th>
</tr>
</thead>
<tbody>
<tr>
<td>AREA CODE</td>
<td>NUMBER</td>
<td></td>
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</table>

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<table>
<thead>
<tr>
<th>11. NAME AND ADDRESS OF OFFEROR</th>
</tr>
</thead>
</table>

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<table>
<thead>
<tr>
<th>12A. SIGNATURE OF PERSON AUTHORIZED TO SIGN</th>
</tr>
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<tbody>
<tr>
<td>12B. NAME OF SIGNER</td>
</tr>
<tr>
<td>12C. TITLE OF SIGNER</td>
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<tr>
<td>12D. DATE</td>
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<tr>
<td>AREA CODE</td>
</tr>
</tbody>
</table>

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**OPTIONAL FORM 308 (9-97)**

Prescribed by OMB - FAR 18 CFR 93.215-11(d)

53.302–309  Optional Form 309, Amendment of Solicitation.

<table>
<thead>
<tr>
<th>AMENDMENT OF SOLICITATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Negotiated Procurements)</td>
</tr>
</tbody>
</table>

**Notice:** Offerors must acknowledge receipt of this amendment in writing, by the date and time specified for proposal submissions at the designated location by the specified date and time. Offerors may be rejected if, by virtue of this amendment, you wish to change your offer. Such changes must make reference to the solicitation and this amendment and be received prior to the date and time specified in Block 6.

**I. Amendment**

<table>
<thead>
<tr>
<th>1. Solicitation Number</th>
<th>2. Solicitation Date</th>
<th>3. Amendment Number</th>
<th>4. Amendment Date</th>
</tr>
</thead>
</table>

**5. Issued By**

This amendment does not change the date by which offers are due unless a date and time is inserted below:

<table>
<thead>
<tr>
<th>A. Date</th>
<th>B. Time</th>
</tr>
</thead>
</table>

**7. For Information Call (No collect calls)**

<table>
<thead>
<tr>
<th>A. Name</th>
<th>B. Telephone</th>
</tr>
</thead>
</table>

**Area Code**

**C. E-mail Address**

**Phone Number**

**II. Acknowledgment of Amendment**

In lieu of other written methods of acknowledgment, the offeror may complete Blocks 9 and 10 and return this amendment to the address in Block 5.

**9. Name and Address of Offeror**

**10a. Offeror (signature of person authorized to sign)**

**10b. Name of signer**

**10c. Title of signer**

**10d. Date**

[53.302–309 (a)(7)]

Prescribed by FAR 52.215–1(g)

Federal Acquisition Regulation


<table>
<thead>
<tr>
<th>SMALL DISADVANTAGED BUSINESS (SDB) PARTICIPATION REPORT</th>
<th>OMB No.: 9000-0150</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Expired:</td>
</tr>
</tbody>
</table>

Public reporting burden for this collection of information is estimated to average 8.66 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

<table>
<thead>
<tr>
<th>1A. CONTRACTOR'S NAME</th>
<th>2. CONTRACT NUMBER</th>
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</thead>
<tbody>
<tr>
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<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>3. TOTAL PARTICIPATION OF SDB IN THE CONTRACT ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>4. SDB PARTICIPATION AT PRIME CONTRACT LEVEL</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. NAICS INDUSTRY SUBSECTOR</td>
</tr>
<tr>
<td>-------------------------------</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

| 5. BREAKDOWN OF SDB PARTICIPATION AT SUBCONTRACT LEVEL BY NAICS INDUSTRY SUBSECTOR | A. NAICS INDUSTRY SUBSECTOR | B. DOLLARS | C. PERCENT |
|-------------------------------------------------------------------------------------|-----------------------------|------------|
|                                                                                     |                             |            |

<table>
<thead>
<tr>
<th>6. PREPARED BY</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. NAME OF INDIVIDUAL</td>
</tr>
<tr>
<td>----------------------</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

AUTHORIZED FOR LOCAL REPRODUCTION
PREVIOUS EDITION IS NOT DELETABLE

OPTIONAL FORM 312 Rev. 10-2000
Prepared by: GPA-410-00-0001-0000

553
53.302–312

GENERAL INFORMATION INSTRUCTIONS

1. This form collects data on the participation of small disadvantaged business concerns in contracts that contain the clause at FAR 52.219-25, Small Disadvantaged Business Participation Program - Disadvantaged Status and Reporting.

2. Submit this report to the contracting officer. If your organization is required to report subcontracting data under an individual subcontracting plan, you may attach this report to the final SF 294, Subcontracting Report for Individual Contracts, submitted under the contract.


SPECIFIC INSTRUCTIONS

Block 3. Report the total dollar amount of participation of small disadvantaged business concerns under the contract cited in Block 2. Participation may be through subcontracting, teaming arrangement, joint ventures, or as the prime contractor (provided the prime contractor waived its right to a price evaluation adjustment).

Block 4. Report the participation, if any, by small disadvantaged business concerns in this contract at the prime contract level. All prime contract dollars must be reported under the North American Industrial Classification System (NAICS) assigned to the prime contract. Report the dollar amount and percentage of the total contract value.

Block 5. Report, by NAICS Industry Subsector, as determined by the Department of Commerce, the participation by small disadvantaged business concerns in this contract at the subcontract level. Report the dollar amount and percentage of the total contract value.

Block 6. Provide the name, telephone number, and e-mail address of the individual who can answer questions related to this report.

(65 FR 46062, July 26, 2000)
Federal Acquisition Regulation 53.302–333

53.302–333 Procurement Integrity Certification for Procurement Officials.

<table>
<thead>
<tr>
<th>NAME OF PROCUREMENT OFFICIAL</th>
<th>SOCIAL SECURITY NUMBER</th>
</tr>
</thead>
</table>

Privacy Act Notice to Employees and Officials

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the following notice is provided:


Your signature on the Optional Form 333, Procurement Integrity Certification for Procurement Officials, and disclosure of your Social Security Number on this page are voluntary, but possible effects upon you if the certification is not signed and the Social Security Number is not provided include the following:

Disqualification from particular work or duty assignments, or from the position for which you have applied or which you currently hold, or other appropriate action, or administrative delay in processing your certification.

Principal Purpose for Collection of this Information:

To obtain and maintain a completed certification from any person designated as a "Procurement official" as defined by 41 U.S.C. 423 and applicable procurement regulations.

Routine Uses Which May Be Made of the Collected Information:

Transfers to Federal, state, local, or foreign agencies when relevant to civil, criminal, administrative, or regulatory investigations or proceedings, including transfer to the Office of Government Ethics in connection with its program oversight responsibilities, or pursuant to a request by any appropriate federal agency in connection with hiring, retention, or grievance of an employee or applicant, the issuance of a security clearance, the award or administration of a contract, the issuance of a license, grant, or other benefit, to committees of the Congress, or any other use specified by the Office of Personnel Management (OPM) in the system of records entitled 'OPM/GOVT-1, General Personnel Records,' as published in the Federal Register periodically by OPM.

Optional Form (Rev. 1/1992) 333 back

Optional Form 336, Continuation Sheet.

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>SUPPLIES/SERVICES</th>
<th>QUANTITY</th>
<th>UNIT</th>
<th>UNIT PRICE</th>
<th>AMOUNT</th>
</tr>
</thead>
</table>

Federal Acquisition Regulation

53.302–347  Order for Supplies or Services.

ORDER FOR SUPPLIES OR SERVICES

<table>
<thead>
<tr>
<th>PAGE</th>
<th>OF</th>
<th>PAGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. DATE OF ORDER</td>
<td>2. CONTRACT NO. (if any)</td>
<td>3. SHIP TO:</td>
</tr>
<tr>
<td>3. ORDER NO.</td>
<td>4. REQUISITION REFERENCE NO.</td>
<td>A. NAME OF CONSIGNEE</td>
</tr>
<tr>
<td>5. ISSUING OFFICE (if applicable)</td>
<td>6. STREET ADDRESS</td>
<td>B. STREET ADDRESS</td>
</tr>
<tr>
<td>7. TO:</td>
<td>8. SHIP VIA</td>
<td></td>
</tr>
<tr>
<td>a. NAME OF CONTRACTOR</td>
<td>9. TYPE OF ORDER</td>
<td></td>
</tr>
<tr>
<td>b. COMPANY NAME</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. STREET ADDRESS</td>
<td>REFERENCE YOUR PURCHASE</td>
<td></td>
</tr>
<tr>
<td>d. CITY</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. STATE</td>
<td>10. ZIP CODE</td>
<td></td>
</tr>
<tr>
<td>11. ACCOUNTING AND APPROPRIATION DATA</td>
<td>10. REQUISITIONING OFFICE</td>
<td></td>
</tr>
</tbody>
</table>

11. BUSINESS CLASSIFICATION (check appropriate boxes):
- [ ] a. SMALL
- [ ] b. OTHER THAN SMALL
- [ ] c. DISADVANTAGED
- [ ] d. WOMEN-OWNED
- [ ] e. HUBZone
- [ ] f. EMERGING SMALL BUSINESS
- [ ] g. SERVICE-OWNED VETERAN-OWNED

12. T.O.B. POINT

13. PLACE OF

14. GOVERNMENT BILL NO.

15. DELIVER TO T.O.B. POINT ON OR BEFORE (Date)

16. DISCOUNT TERMS

17. SCHEDULE (See reverse for Rejections)

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>SUPPLIES OR SERVICES</th>
<th>QUANTITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>18. SHIPPI NG POINT</td>
<td>19. GROSS SHIPPING WEIGHT</td>
<td>20. INVOICE NO.</td>
</tr>
<tr>
<td>21. MAIL INVOICE TO:</td>
<td>22. UNITED STATES OF AMERICA (By Signature)</td>
<td></td>
</tr>
<tr>
<td>a. NAME</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. STREET ADDRESS (or P.O. Box)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. CITY</td>
<td>6. STATE</td>
<td></td>
</tr>
<tr>
<td>7. ZIP CODE</td>
<td></td>
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</tbody>
</table>

1347

OPTIONAL FORM 347 (REV. 4/2008)
Prescribed by GSA/FAR 48 CFR 9.2132
SUPPLEMENTAL INVOICING INFORMATION

If desired, this order (or a copy thereof) may be used by the Contractor as the Contractor's invoice, instead of a separate invoice, provided the following statement, (stapled and dated) is on (or attached to) the order: "Payment is requested in the amount of $________. No other invoice will be submitted." However, if the Contractor wishes to submit an invoice, the following information must be provided: contract number (if any), order number, item number(s), description of supplies or service, sizes, quantities, unit prices, and extended totals. Prepaid shipping costs will be indicated as a separate item on the invoice. Where shipping costs exceed $10 (except for parcel post), the billing must be supported by a bill of lading or receipt. When several orders are invoiced to an ordering activity during the same billing period, consolidated periodic billings are encouraged.

RECEIVING REPORT

Quantity in the "Quantity Accepted" column on the face of this order has been: □ inspected, □ accepted, □ received by me and conforms to contract. Items listed below have been rejected for the reasons indicated.

<table>
<thead>
<tr>
<th>SHIPMENT NUMBER</th>
<th>PARTIAL</th>
<th>DATE RECEIVED</th>
<th>SIGNATURE OF AUTHORIZED U.S. GOVT REP.</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL CONTAINERS</td>
<td>GROSS WEIGHT</td>
<td>RECEIVED AT</td>
<td>TITLE</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>SUPPLIES OR SERVICES</th>
<th>UNIT</th>
<th>QUANTITY REJECTED</th>
<th>REASON FOR REJECTION</th>
</tr>
</thead>
</table>

(72 FR 63090, Nov. 7, 2007)
### Order for Supplies or Services Schedule—Continuation

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>SUPPLIES OR SERVICES</th>
<th>QUANTITY ORDERED</th>
<th>UNIT</th>
<th>UNIT PRICE</th>
<th>AMOUNT</th>
<th>QUANTITY ACCEPTED</th>
</tr>
</thead>
</table>

**TOTAL CARRIED FORWARD TO 1ST PAGE (ITEM 17(h))**

(72 FR 63092, Nov. 7, 2007)
Optional Form 1419, Abstract of Offers—Construction.

<table>
<thead>
<tr>
<th>A. NUMBER OF AMENDMENTS ISSUED</th>
<th>B. DESCRIPTION OF OFFERED ITEM</th>
<th>C. EST. QNTY</th>
<th>D. UNIT PRICE</th>
<th>E. ESTIMATED AMOUNT</th>
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<tbody>
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</table>

[CFR 53.302-1419, page 560]

|--------------------------|--------------------------------------------------------------------------------------|

<table>
<thead>
<tr>
<th>CONTRACT ITEM</th>
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<th>CONTRACT ITEM</th>
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[54 FR 29222, July 11, 1989]

<table>
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<tr>
<th>DEPARTMENT OF DEFENSE</th>
<th>1. CLEARANCE AND SAFEKEEPING</th>
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<tbody>
<tr>
<td>CONTRACT SECURITY CLASSIFICATION SPECIFICATION</td>
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<tr>
<td>(The requirements of the DoD Industrial Security Manual apply to all security aspects of this effort.)</td>
<td></td>
</tr>
<tr>
<td>2. THIS SPECIFICATION IS FOR:</td>
<td>2. THIS SPECIFICATION IS:</td>
</tr>
<tr>
<td>[ ] READ CONTRACT NUMBER</td>
<td>[ ] READ CONTRACT NUMBER</td>
</tr>
<tr>
<td>[ ] SUBCONTRACT NUMBER</td>
<td>[ ] SUBCONTRACT NUMBER</td>
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<tr>
<td>4. IS THIS A FOLLOW-ON CONTRACT?</td>
<td>[ ] YES</td>
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<tr>
<td>[ ] NO</td>
<td>[ ] YES</td>
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<td>[ ] NO</td>
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<td>5. IS THIS A FINAL DD FORM 254?</td>
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<td>[ ] NO</td>
<td>[ ] NO</td>
</tr>
<tr>
<td>6. CONTRACTOR</td>
<td>Include Commercial and Government Entity (CAGE) Code</td>
</tr>
<tr>
<td>[ ] NAME, ADDRESS, AND CAGE CODE</td>
<td>[ ] NAME, ADDRESS, AND CAGE CODE</td>
</tr>
<tr>
<td>[ ] CAGE CODE</td>
<td>[ ] CAGE CODE</td>
</tr>
<tr>
<td>7. SUBCONTRACTOR</td>
<td>Include Commercial and Government Entity (CAGE) Code</td>
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<tr>
<td>[ ] NAME, ADDRESS, AND CAGE CODE</td>
<td>[ ] NAME, ADDRESS, AND CAGE CODE</td>
</tr>
<tr>
<td>[ ] CAGE CODE</td>
<td>[ ] CAGE CODE</td>
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<tr>
<td>8. ACTUAL PERFORMANCE</td>
<td>Include Commercial and Government Entity (CAGE) Code</td>
</tr>
<tr>
<td>[ ] LOCATION</td>
<td>[ ] LOCATION</td>
</tr>
<tr>
<td>[ ] CAGE CODE</td>
<td>[ ] CAGE CODE</td>
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<tr>
<td>9. GENERAL IDENTIFICATION OF THIS PROCUREMENT</td>
<td>Include Commercial and Government Entity (CAGE) Code</td>
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<tr>
<td>[ ] DESCRIPTION OF LEVEL OF PROTECTION REQUIRED</td>
<td>[ ] DESCRIPTION OF LEVEL OF PROTECTION REQUIRED</td>
</tr>
<tr>
<td>[ ] SECURITY CLEARANCE</td>
<td>[ ] SECURITY CLEARANCE</td>
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<tr>
<td>[ ] SECURITY CLEARANCE</td>
<td>[ ] SECURITY CLEARANCE</td>
</tr>
<tr>
<td>10. THIS CONTRACT WILL REQUIRE ACCESS TO:</td>
<td>11. IN PERFORMING THIS CONTRACT, THE CONTRACTOR WILL:</td>
</tr>
<tr>
<td>[ ] INSTRUCTED DATA</td>
<td>[ ] INSTRUCTED DATA</td>
</tr>
<tr>
<td>[ ] RESTRICTED DATA</td>
<td>[ ] RESTRICTED DATA</td>
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<tr>
<td>[ ] OFFICIAL NUCLEAR WEAPON DESIGN INFORMATION</td>
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DD Form 254, DEC 90

Previous editions are obsolete.
12. PUBLIC RELEASE. Any information classified or unclassified pertaining to this contract shall not be released for public dissemination except as provided by the Industrial Security Manual or unless it has been approved for public release by appropriate U.S. Government authorities. Proposed public releases shall be submitted for approval prior to release.

13. SECURITY GUIDANCE. The security classification guidance needed for this classified effort is identified above. If any difficulty is encountered in applying this guidance or if any other contributing factor indicates a need to change this guidance, the contractor is authorized and encouraged to provide written comments, to challenge the guidance or the classification assigned to any information or material furnished or generated under this contract, and to submit any questions for interpretation of this guidance to the official identified below. Pending final decision by the appropriate level of classification assigned or recommended, (fork as appropriate for the classified effort). Attach or forward under separate cover or any documents referred to or referenced herein. Add additional pages as needed to provide complete guidance.

14. ADDITIONAL SECURITY REQUIREMENTS. Requirements, in addition to those requirements, are established for this contract. If yes, identify the pertinent contractual clause in the contract document itself or provide an appropriate statement which identifies the additional requirement. Provide a copy of the requirement to the cognizant security office. Use Item 17 additional space required.

15. INSPECTIONS. Elements of this contract are outside the inspection responsibility of the cognizant security office. If yes, explain and identify specific areas or elements covered and the activity responsible for inspections. Use Item 17 additional space required.

16. CERTIFICATION AND SIGNATURE. Security requirements stated herein are complete and adequate for safeguarding the classified information to be released or generated under this classified effort. All questions shall be referred to the official named below.

** DD Form 254 Reverse, DEC 90 **

(56 FR 41741, Aug. 22, 1991)
### DEPARTMENT OF DEFENSE SECURITY AGREEMENT

**This Agreement,** entered into this 19 day of

by and between **THE UNITED STATES OF AMERICA through the Defense Contract Administration Services,**

acting for the Department of Defense (hereinafter called the Government) and (i)

a corporation organized and existing under the laws of the State of

(ii) a partnership consisting of

(iii) an individual trading as

with its principal office and place of business at

in the city of

State of

(hereinafter called the Contractor).

WITNESSETH THAT:

**WHEREAS,** the Government, through the Department of the Army, the Department of the Navy, and for the Department of the Air Force, has in the past purchased or may in the future purchase from the Contractor supplies or services which are required and necessary to the national defense of the United States, or may write into or request quotations on proposed contracts for the purchase of supplies or services which are required and necessary to the national defense of the United States; and

**WHEREAS,** it is essential that certain security measures be taken by the Contractor in order to preserve and maintain the security of the United States through the prevention of improper disclosure of classified information derived from matters affecting the national defense, sabotage, or other acts detrimental to the security of the United States.

**NOW, THEREFORE,** in consideration of the foregoing and of the mutual promises herein contained, the parties hereto agree as follows:

#### Section I—SECURITY CONTROLS

(A) The Contractor agrees to provide and maintain a system of security controls within it or its own organization in accordance with the requirements of the Department of Defense Industrial Security Manual for Safeguarding Classified Information attached hereto and make a part of this agreement, under, however, (i) to any revisions of the Manual required by the demands of national security as determined by the Government, notice of which has been furnished to the Contractor, and (ii) to mutual agreements entered into by the parties in order to adapt the Manual to the Contractor's business and necessary procedures thereunder. In order to place in effect such security controls, the Contractor further agrees to prepare 'Standard Practice Procedures' for its or its own use, such procedures to be consistent with the Department of Defense Industrial Security Manual for Safeguarding Classified Information. In the event of any inconsistency between the Contractor's Standard Practice Procedures and the Department of Defense Industrial Security Manual for Safeguarding Classified Information as the same may be revised, the Manual shall control.

(B) The Government agrees that it shall indicate when necessary by security classification (Top Secret, Secret, or Confidential), the degree of importance to the national defense of information pertaining to supplies, services, and other matters to be furnished by the Contractor to the Government or the Government to the Contractor, and the Government shall give written notice of such security classification to the Contractor and of any subsequent changes thereof, provided, however, that matters requiring security classification will be assigned the broad protective security classification consistent with proper safeguarding of the matter concerned, since overclassification can cause unnecessary operational delays and depresses the importance of correctly classified matter. Further, the Government agrees that when Atomic Energy information is involved it will, when necessary, indicate by a marking additional to the classification marking that the information is 'Restricted Data—Atomic Energy Act, 1946.' The Contractor is authorized to rely on any letter or written instrument signed by the contracting officer changing the classification of matter. The Government also agrees upon written application of the Contractor to designate employees of the Contractor who may have access to information classified Top Secret or Secret to such information classified Confidential when 'Restricted Data' is involved, or to matter involving research, development, or production of cryptography equipment, regardless of its military classification, and also employees to have access to any classified matter.

(C) The Contractor agrees that it or it shall determine that any subcontractor, supplier, individual, or organization proposed by it or for the furnishing of supplies or services which will involve access to classified information in its or it custody but executed a Department of Defense Security Agreement which is still in effect, with any Military Department, prior to being accorded access to such classified information.

#### Section II—INSPECTION

Designated representatives of the Government responsible for inspection pertaining to industrial plant security shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in compliance with the requirements of the terms and conditions of the Department of Defense Industrial Security Manual for Safeguarding Classified Information. Should the Government, through its authorized representatives, determine that the Contractor's security methods, procedures, or facilities do not comply with such requirements, it shall submit a written report to the Contractor advising him of the deficiencies.

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**DD FORM 441 EDITION OF MAY 54 MAY BE USED**
Section III—MODIFICATION
Modification of this security agreement (as distinguished from the Industrial Security Manual for Safeguarding Classified Information, which may be modified in accordance with section I of this agreement) may be made only by written agreement of the parties hereto.

Section IV—TERMINATION
This agreement shall remain in effect until terminated through the giving of 30 days’ written notice to the other party of intention to terminate; provided, however, notwithstanding any such termination, the terms and conditions of this agreement shall continue in effect so long as the Contractor has classified information in his possession or under his control.

Section V—PRIOR SECURITY AGREEMENTS
As of the date hereof, this security agreement replaces and succeeds any and all prior security or secrecy agreements, understandings, and representations with respect to the subject matter included herein, entered into between the Contractor and the Department of the Army, the Department of the Navy, and/or the Department of the Air Force. Provided, That the term “security or secrecy agreements, understandings, and representations” shall not include agreements, understandings, and representations contained in contracts for the furnishing of supplies or services to the Government hereinafter entered into between the Contractor and the Department of the Army, the Department of the Navy, and/or the Department of the Air Force.

Section VI—SECURITY COSTS
This agreement does not obligate Government funds, and the Government shall not be liable for any costs or claims of the Contractor arising out of this agreement or instructions issued hereunder. It is recognized, however, that the parties may provide in other written contracts for security costs which may be properly chargeable thereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written:

The United States of America

By

(Authorized representative of the Government)

(Organization)

Witness

By

(Title)

(Address)

Note.—In case of corporation, witnesses not required, but certificate below must be completed. Type or print names under all signatures.

Certificate

I, [Name], certify that I am the [Title], of the corporation named as Contractor herein; that who signed this agreement on behalf of the Contractor, was then of said corporation; that said agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

(Corporate Seal)
PAYROLL

(For Contractor's Optional Use; See Instruction, Form WH-347 Inst.)

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Form WH-347 (0/00) - Formally Sec. 156 - Purchase this form directly from the Supt. of Documents
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*Form WH-347 (1/08) - FORMERLY SOL 126...PURCHASE THIS FORM DIRECTLY FROM THE SUPT. OF DOCUMENTS*
FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
Table of OMB Control Numbers
List of CFR Sections Affected
Table of CFR Titles and Chapters
(Revised as of October 1, 2009)

Title 1—General Provisions

I Administrative Committee of the Federal Register (Parts 1—49)
II Office of the Federal Register (Parts 50—299)
IV Miscellaneous Agencies (Parts 400—500)

Title 2—Grants and Agreements

Subtitle A—Office of Management and Budget Guidance for Grants and Agreements
I Office of Management and Budget Governmentwide Guidance for Grants and Agreements (Parts 100—199)
II Office of Management and Budget Circulars and Guidance (200—299)

Subtitle B—Federal Agency Regulations for Grants and Agreements
III Department of Health and Human Services (Parts 300—399)
VI Department of State (Parts 600—699)
VIII Department of Veterans Affairs (Parts 800—899)
IX Department of Energy (Parts 900—999)
XI Department of Defense (Parts 1100—1199)
XII Department of Transportation (Parts 1200—1299)
XIII Department of Commerce (Parts 1300—1399)
XIV Department of the Interior (Parts 1400—1499)
XV Environmental Protection Agency (Parts 1500—1599)
XVIII National Aeronautics and Space Administration (Parts 1880—1899)
XXII Corporation for National and Community Service (Parts 2200—2299)
XXXI Institute of Museum and Library Services (Parts 3100—3199)
XXXII National Endowment for the Arts (Parts 3200—3299)
XXXIII National Endowment for the Humanities (Parts 3300—3399)
Chap.  Title 2—Grants and Agreements—Continued

XXXV Export-Import Bank of the United States (Parts 3500—3599)
XXXVII Peace Corps (Parts 3700—3799)

Title 3—The President

I  Executive Office of the President (Parts 100—199)

Title 4—Accounts

I  Government Accountability Office (Parts 1—99)
II  Recovery Accountability and Transparency Board (Parts 200—299)

Title 5—Administrative Personnel

I  Office of Personnel Management (Parts 1—1199)
II  Merit Systems Protection Board (Parts 1200—1299)
III  Office of Management and Budget (Parts 1300—1399)
V  The International Organizations Employees Loyalty Board (Parts 1500—1599)
VI  Federal Retirement Thrift Investment Board (Parts 1600—1699)
VIII  Office of Special Counsel (Parts 1800—1899)
IX  Appalachian Regional Commission (Parts 1900—1999)
XI  Armed Forces Retirement Home (Parts 2100—2199)
XIV  Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)
XV  Office of Administration, Executive Office of the President (Parts 2500—2599)
XVI  Office of Government Ethics (Parts 2600—2699)
XXI  Department of the Treasury (Parts 3100—3199)
XXII  Federal Deposit Insurance Corporation (Parts 3200—3299)
XXIII  Department of Energy (Parts 3300—3399)
XXIV  Federal Energy Regulatory Commission (Parts 3400—3499)
XXV  Department of the Interior (Parts 3500—3599)
XXVI  Department of Defense (Parts 3600—3699)
XXVIII  Department of Justice (Parts 3800—3899)
XXIX  Federal Communications Commission (Parts 3900—3999)
XXX  Farm Credit System Insurance Corporation (Parts 4000—4099)
XXXI  Farm Credit Administration (Parts 4100—4199)
XXXIII  Overseas Private Investment Corporation (Parts 4300—4399)
XXXV  Office of Personnel Management (Parts 4500—4599)
XL  Interstate Commerce Commission (Parts 5000—5099)
XLII  Department of Labor (Parts 5200—5299)
XLIII  National Science Foundation (Parts 5300—5399)
Title 5—Administrative Personnel—Continued

XLV Department of Health and Human Services (Parts 5500—5599)
XLVI Postal Rate Commission (Parts 5600—5699)
XLVII Federal Trade Commission (Parts 5700—5799)
XLVIII Nuclear Regulatory Commission (Parts 5800—5899)
L Department of Transportation (Parts 6000—6099)
LI Export-Import Bank of the United States (Parts 6200—6299)
LII Department of Education (Parts 6300—6399)
LIII Environmental Protection Agency (Parts 6400—6499)
LV National Endowment for the Arts (Parts 6500—6599)
LVII National Endowment for the Humanities (Parts 6600—6699)
LVIII General Services Administration (Parts 6700—6799)
LVII Board of Governors of the Federal Reserve System (Parts 6800—6899)
LIX National Aeronautics and Space Administration (Parts 6900—6999)
LX United States Postal Service (Parts 7000—7099)
LXI National Labor Relations Board (Parts 7100—7199)
LXII Equal Employment Opportunity Commission (Parts 7200—7299)
LXIII Inter-American Foundation (Parts 7300—7399)
LXIV Merit Systems Protection Board (Parts 7400—7499)
LXV Department of Housing and Urban Development (Parts 7500—7599)
LXVI National Archives and Records Administration (Parts 7600—7699)
LXVII Institute of Museum and Library Services (Parts 7700—7799)
LXVIII Commission on Civil Rights (Parts 7800—7899)
LXIX Tennessee Valley Authority (Parts 7900—7999)
LXXI Consumer Product Safety Commission (Parts 8100—8199)
LXXII Department of Agriculture (Parts 8300—8399)
LXXIII Federal Mine Safety and Health Review Commission (Parts 8400—8499)
LXXIV Federal Retirement Thrift Investment Board (Parts 8600—8699)
LXXV Office of Management and Budget (Parts 8700—8799)

Title 6—Domestic Security

I Department of Homeland Security, Office of the Secretary (Parts 0—99)
Title 7—Agriculture

SUBTITLE A—Office of the Secretary of Agriculture (Parts 0—26)

SUBTITLE B—Regulations of the Department of Agriculture

I Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

II Food and Nutrition Service, Department of Agriculture (Parts 210—299)

III Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

IV Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

V Agricultural Research Service, Department of Agriculture (Parts 500—599)

VI Natural Resources Conservation Service, Department of Agriculture (Parts 600—699)

VII Farm Service Agency, Department of Agriculture (Parts 700—799)

VIII Grain Inspection, Packers and Stockyards Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)

IX Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

X Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

XI Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

XIV Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

XV Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

XVI Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)

XVII Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

XVIII Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

XX Local Television Loan Guarantee Board (Parts 2200—2299)

XXVI Office of Inspector General, Department of Agriculture (Parts 2600—2699)

XXVII Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)

XXVIII Office of Operations, Department of Agriculture (Parts 2800—2899)

XXIX Office of Energy Policy and New Uses, Department of Agriculture (Parts 2900—2999)

XXX Office of the Chief Financial Officer, Department of Agriculture (Parts 3000—3099)
Title 7—Agriculture—Continued

XXXI Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)
XXXII Office of Procurement and Property Management, Department of Agriculture (Parts 3200—3299)
XXXIII Office of Transportation, Department of Agriculture (Parts 3300—3399)
XXXIV Cooperative State Research, Education, and Extension Service, Department of Agriculture (Parts 3400—3499)
XXXV Rural Housing Service, Department of Agriculture (Parts 3500—3599)
XXXVI National Agricultural Statistics Service, Department of Agriculture (Parts 3600—3699)
XXXVII Economic Research Service, Department of Agriculture (Parts 3700—3799)
XXXVIII World Agricultural Outlook Board, Department of Agriculture (Parts 3800—3899)
XLI [Reserved]
XLII Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture (Parts 4200—4299)
L Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, Department of Agriculture (Parts 5000—5099)

Title 8—Aliens and Nationality

I Department of Homeland Security (Immigration and Naturalization) (Parts 1—499)
V Executive Office for Immigration Review, Department of Justice (Parts 1000—1399)

Title 9—Animals and Animal Products

I Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)
II Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs), Department of Agriculture (Parts 200—299)
III Food Safety and Inspection Service, Department of Agriculture (Parts 300—599)

Title 10—Energy

I Nuclear Regulatory Commission (Parts 0—199)
II Department of Energy (Parts 200—699)
III Department of Energy (Parts 700—999)
X Department of Energy (General Provisions) (Parts 1000—1099)
XIII Nuclear Waste Technical Review Board (Parts 1303—1399)
XVII Defense Nuclear Facilities Safety Board (Parts 1700—1799)
Title 10—Energy—Continued

XVIII Northeast Interstate Low-Level Radioactive Waste Commission (Parts 1800—1899)

Title 11—Federal Elections

I Federal Election Commission (Parts 1—999)
II Election Assistance Commission (Parts 1000—1999)

Title 12—Banks and Banking

I Comptroller of the Currency, Department of the Treasury (Parts 1—199)
II Federal Reserve System (Parts 200—299)
III Federal Deposit Insurance Corporation (Parts 300—399)
IV Export-Import Bank of the United States (Parts 400—499)
V Office of Thrift Supervision, Department of the Treasury (Parts 500—599)
VI Farm Credit Administration (Parts 600—699)
VII National Credit Union Administration (Parts 700—799)
VIII Federal Financing Bank (Parts 800—899)
IX Federal Housing Finance Board (Parts 900—999)
XI Federal Financial Institutions Examination Council (Parts 1000—1199)
XII Federal Housing Finance Agency (Parts 1200—1299)
XIV Farm Credit System Insurance Corporation (Parts 1300—1499)
XV Department of the Treasury (Parts 1500—1599)
XVII Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1600—1799)
XVIII Community Development Financial Institutions Fund, Department of the Treasury (Parts 1800—1899)

Title 13—Business Credit and Assistance

I Small Business Administration (Parts 1—199)
III Economic Development Administration, Department of Commerce (Parts 300—399)
IV Emergency Steel Guarantee Loan Board (Parts 400—499)
V Emergency Oil and Gas Guaranteed Loan Board (Parts 500—599)

Title 14—Aeronautics and Space

I Federal Aviation Administration, Department of Transportation (Parts 1—199)
II Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)
III Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (Parts 400—499)
Title 14—Aeronautics and Space—Continued

V National Aeronautics and Space Administration (Parts 1200—1299)
VI Air Transportation System Stabilization (Parts 1300—1399)

Title 15—Commerce and Foreign Trade

SUBTITLE A—OFFICE OF THE SECRETARY OF COMMERCE (PARTS 0—29)
SUBTITLE B—REGULATIONS RELATING TO COMMERCE AND FOREIGN TRADE
I Bureau of the Census, Department of Commerce (Parts 30—199)
II National Institute of Standards and Technology, Department of Commerce (Parts 200—299)
III International Trade Administration, Department of Commerce (Parts 300—399)
IV Foreign-Trade Zones Board, Department of Commerce (Parts 400—499)
VII Bureau of Industry and Security, Department of Commerce (Parts 700—799)
VIII Bureau of Economic Analysis, Department of Commerce (Parts 800—899)
IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)
XI Technology Administration, Department of Commerce (Parts 1100—1199)
XIII East-West Foreign Trade Board (Parts 1300—1399)
XIV Minority Business Development Agency (Parts 1400—1499)
SUBTITLE C—REGULATIONS RELATING TO FOREIGN TRADE AGREEMENTS
XX Office of the United States Trade Representative (Parts 2000—2099)

SUBTITLE D—REGULATIONS RELATING TO TELECOMMUNICATIONS AND INFORMATION
XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)

Title 16—Commercial Practices

I Federal Trade Commission (Parts 0—999)
II Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

I Commodity Futures Trading Commission (Parts 1—199)
II Securities and Exchange Commission (Parts 200—399)
IV Department of the Treasury (Parts 400—499)
Title 18—Conservation of Power and Water Resources

I Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)
III Delaware River Basin Commission (Parts 400—499)
VI Water Resources Council (Parts 700—799)
VIII Susquehanna River Basin Commission (Parts 800—899)
XIII Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

I Bureau of Customs and Border Protection, Department of Homeland Security; Department of the Treasury (Parts 0—199)
II United States International Trade Commission (Parts 200—299)
III International Trade Administration, Department of Commerce (Parts 300—399)
IV Bureau of Immigration and Customs Enforcement, Department of Homeland Security (Parts 400—599)

Title 20—Employees’ Benefits

I Office of Workers’ Compensation Programs, Department of Labor (Parts 1—199)
II Railroad Retirement Board (Parts 200—399)
III Social Security Administration (Parts 400—499)
IV Employees Compensation Appeals Board, Department of Labor (Parts 500—599)
V Employment and Training Administration, Department of Labor (Parts 600—699)
VI Employment Standards Administration, Department of Labor (Parts 700—799)
VII Benefits Review Board, Department of Labor (Parts 800—899)
VIII Joint Board for the Enrollment of Actuaries (Parts 900—999)
IX Office of the Assistant Secretary for Veterans’ Employment and Training Service, Department of Labor (Parts 1000—1099)

Title 21—Food and Drugs

I Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)
II Drug Enforcement Administration, Department of Justice (Parts 1300—1399)
III Office of National Drug Control Policy (Parts 1400—1499)

Title 22—Foreign Relations

I Department of State (Parts 1—199)
II Agency for International Development (Parts 200—299)
III Peace Corps (Parts 300—399)
Title 22—Foreign Relations—Continued

IV International Joint Commission, United States and Canada (Parts 400—499)
V Broadcasting Board of Governors (Parts 500—599)
VII Overseas Private Investment Corporation (Parts 700—799)
IX Foreign Service Grievance Board (Parts 900—999)
X Inter-American Foundation (Parts 1000—1099)
XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)
XII United States International Development Cooperation Agency (Parts 1200—1299)
XIII Millennium Challenge Corporation (Parts 1300—1399)
XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)
XV African Development Foundation (Parts 1500—1599)
XVI Japan-United States Friendship Commission (Parts 1600—1699)
XVII United States Institute of Peace (Parts 1700—1799)

Title 23—Highways

I Federal Highway Administration, Department of Transportation (Parts 1—999)
II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)
III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)
SUBTITLE B—Regulations Relating to Housing and Urban Development

I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)
II Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)
III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)
IV Office of Housing and Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development (Parts 400—499)
V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)
Title 24—Housing and Urban Development—Continued

VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699) [Reserved]

VII Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

VIII Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs, Section 202 Direct Loan Program, Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons With Disabilities Program) (Parts 800—899)

IX Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—1699)

X Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)

XII Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

XXV Neighborhood Reinvestment Corporation (Parts 4100—4199)

Title 25—Indians

I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)

III National Indian Gaming Commission, Department of the Interior (Parts 500—599)

IV Office of Navajo and Hopi Indian Relocation (Parts 700—799)

V Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)

VI Office of the Assistant Secretary-Indian Affairs, Department of the Interior (Parts 1000—1199)

VII Office of the Special Trustee for American Indians, Department of the Interior (Parts 1200—1299)

Title 26—Internal Revenue

I Internal Revenue Service, Department of the Treasury (Parts 1—899)

Title 27—Alcohol, Tobacco Products and Firearms

I Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury (Parts 1—399)
Title 27—Alcohol, Tobacco Products and Firearms—Continued

II Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice (Parts 400—699)

Title 28—Judicial Administration

I Department of Justice (Parts 0—299)
III Federal Prison Industries, Inc., Department of Justice (Parts 300—399)
V Bureau of Prisons, Department of Justice (Parts 500—599)
VI Offices of Independent Counsel, Department of Justice (Parts 600—699)
VII Office of Independent Counsel (Parts 700—799)
VIII Court Services and Offender Supervision Agency for the District of Columbia (Parts 800—899)
IX National Crime Prevention and Privacy Compact Council (Parts 900—999)
XI Department of Justice and Department of State (Parts 1100—1199)

Title 29—Labor

SUBTITLE A—Office of the Secretary of Labor (Parts 0—99)
SUBTITLE B—Regulations Relating to Labor
I National Labor Relations Board (Parts 100—199)
II Office of Labor-Management Standards, Department of Labor (Parts 200—299)
III National Railroad Adjustment Board (Parts 300—399)
IV Office of Labor-Management Standards, Department of Labor (Parts 400—499)
V Wage and Hour Division, Department of Labor (Parts 500—599)
IX Construction Industry Collective Bargaining Commission (Parts 900—999)
X National Mediation Board (Parts 1200—1299)
XII Federal Mediation and Conciliation Service (Parts 1400—1499)
XIV Equal Employment Opportunity Commission (Parts 1600—1699)
XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)
XX Occupational Safety and Health Review Commission (Parts 2200—2499)
XXV Employee Benefits Security Administration, Department of Labor (Parts 2500—2599)
XXVII Federal Mine Safety and Health Review Commission (Parts 2700—2799)
XL Pension Benefit Guaranty Corporation (Parts 4000—4999)
Title 30—Mineral Resources

I Mine Safety and Health Administration, Department of Labor (Parts 1—199)
II Minerals Management Service, Department of the Interior (Parts 200—299)
III Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300—399)
IV Geological Survey, Department of the Interior (Parts 400—499)
VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

Title 31—Money and Finance: Treasury

SUBTITLE A—OFFICE OF THE SECRETARY OF THE TREASURY (PARTS 0—50)
SUBTITLE B—REGULATIONS RELATING TO MONEY AND FINANCE
I Monetary Offices, Department of the Treasury (Parts 51—199)
II Fiscal Service, Department of the Treasury (Parts 200—399)
IV Secret Service, Department of the Treasury (Parts 400—499)
V Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)
VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)
VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)
VIII Office of International Investment, Department of the Treasury (Parts 800—899)
IX Federal Claims Collection Standards (Department of the Treasury—Department of Justice) (Parts 900—999)

Title 32—National Defense

SUBTITLE A—DEPARTMENT OF DEFENSE
I Office of the Secretary of Defense (Parts 1—399)
V Department of the Army (Parts 400—699)
VI Department of the Navy (Parts 700—799)
VII Department of the Air Force (Parts 800—1099)
SUBTITLE B—OTHER REGULATIONS RELATING TO NATIONAL DEFENSE
XII Defense Logistics Agency (Parts 1200—1299)
XVI Selective Service System (Parts 1600—1699)
XVII Office of the Director of National Intelligence (Parts 1700—1799)
XVIII National Counterintelligence Center (Parts 1800—1899)
XIX Central Intelligence Agency (Parts 1900—1999)
XX Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)
XXI National Security Council (Parts 2100—2199)
XXIV Office of Science and Technology Policy (Parts 2400—2499)
XXVII Office for Micronesian Status Negotiations (Parts 2700—2799)
Title 32—National Defense—Continued

XXVIII Office of the Vice President of the United States (Parts 2800—2899)

Title 33—Navigation and Navigable Waters

I Coast Guard, Department of Homeland Security (Parts 1—199)
II Corps of Engineers, Department of the Army (Parts 200—399)
IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

SUBTITLE A—Office of the Secretary, Department of Education (Parts 1—99)
SUBTITLE B—Regulations of the Offices of the Department of Education
I Office for Civil Rights, Department of Education (Parts 100—199)
II Office of Elementary and Secondary Education, Department of Education (Parts 200—299)
III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)
IV Office of Vocational and Adult Education, Department of Education (Parts 400—499)
V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)
VI Office of Postsecondary Education, Department of Education (Parts 600—699)
VII Office of Educational Research and Improvement, Department of Education [Reserved]
XI National Institute for Literacy (Parts 1100—1199)
SUBTITLE C—Regulations Relating to Education
XII National Council on Disability (Parts 1200—1299)

Title 35 [Reserved]

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1—199)
II Forest Service, Department of Agriculture (Parts 200—299)
III Corps of Engineers, Department of the Army (Parts 300—399)
IV American Battle Monuments Commission (Parts 400—499)
V Smithsonian Institution (Parts 500—599)
VI [Reserved]
VII Library of Congress (Parts 700—799)
VIII Advisory Council on Historic Preservation (Parts 800—899)
IX Pennsylvania Avenue Development Corporation (Parts 900—999)
X Presidio Trust (Parts 1000—1099)
Title 36—Parks, Forests, and Public Property—Continued

XI Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)
XII National Archives and Records Administration (Parts 1200—1299)
XV Oklahoma City National Memorial Trust (Parts 1500—1599)
XVI Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation (Parts 1600—1699)

Title 37—Patents, Trademarks, and Copyrights

I United States Patent and Trademark Office, Department of Commerce (Parts 1—199)
II Copyright Office, Library of Congress (Parts 200—299)
III Copyright Royalty Board, Library of Congress (Parts 301—399)
IV Assistant Secretary for Technology Policy, Department of Commerce (Parts 400—499)
V Under Secretary for Technology, Department of Commerce (Parts 500—599)

Title 38—Pensions, Bonuses, and Veterans’ Relief

I Department of Veterans Affairs (Parts 0—99)

Title 39—Postal Service

I United States Postal Service (Parts 1—999)
III Postal Regulatory Commission (Parts 3000—3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1—1099)
IV Environmental Protection Agency and Department of Justice (Parts 1400—1499)
V Council on Environmental Quality (Parts 1500—1599)
VI Chemical Safety and Hazard Investigation Board (Parts 1600—1699)
VII Environmental Protection Agency and Department of Defense; Uniform National Discharge Standards for Vessels of the Armed Forces (Parts 1700—1799)

Title 41—Public Contracts and Property Management

SUBTITLE B—OTHER PROVISIONS RELATING TO PUBLIC CONTRACTS
50 Public Contracts, Department of Labor (Parts 50—1—50—999)
51 Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51—1—51—99)
60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60—1—60—999)
61 Office of the Assistant Secretary for Veterans’ Employment and Training Service, Department of Labor (Parts 61—1—61—999)
Title 41—Public Contracts and Property Management—Continued

Chapters 62—100 [Reserved]

Subtitle C—Federal Property Management Regulations System

101 Federal Property Management Regulations (Parts 101–1—101–99)

102 Federal Management Regulation (Parts 102–1—102–299)

Chapters 103—104 [Reserved]

105 General Services Administration (Parts 105–1—105–999)

109 Department of Energy Property Management Regulations (Parts 109–1—109–99)

114 Department of the Interior (Parts 114–1—114–99)

115 Environmental Protection Agency (Parts 115–1—115–99)

128 Department of Justice (Parts 128–1—128–99)

Chapters 129—200 [Reserved]

Subtitle D—Other Provisions Relating to Property Management [Reserved]

Subtitle E—Federal Information Resources Management Regulations System [Reserved]

Subtitle F—Federal Travel Regulation System

300 General (Parts 300–1—300–99)

301 Temporary Duty (TDY) Travel Allowances (Parts 301–1—301–99)

302 Relocation Allowances (Parts 302–1—302–99)

303 Payment of Expenses Connected with the Death of Certain Employees (Part 303–1—303–99)

304 Payment of Travel Expenses from a Non-Federal Source (Parts 304–1—304–99)

Title 42—Public Health

I Public Health Service, Department of Health and Human Services (Parts 1—199)

IV Centers for Medicare & Medicaid Services, Department of Health and Human Services (Parts 400—499)

V Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

Title 43—Public Lands: Interior

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

Subtitle B—Regulations Relating to Public Lands

I Bureau of Reclamation, Department of the Interior (Parts 200—499)

II Bureau of Land Management, Department of the Interior (Parts 1000—9999)

III Utah Reclamation Mitigation and Conservation Commission (Parts 10000—10010)
Title 44—Emergency Management and Assistance

I  Federal Emergency Management Agency, Department of Homeland Security (Parts 0—399)

IV  Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH AND HUMAN SERVICES
(PARTS 1—199)

SUBTITLE B—REGULATIONS RELATING TO PUBLIC WELFARE

II  Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

III  Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)

IV  Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services (Parts 400—499)

V  Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)

VI  National Science Foundation (Parts 600—699)

VII  Commission on Civil Rights (Parts 700—799)

VIII  Office of Personnel Management (Parts 800—899) [Reserved]

X  Office of Community Services, Administration for Children and Families, Department of Health and Human Services (Parts 1000—1099)

XI  National Foundation on the Arts and the Humanities (Parts 1100—1199)

XII  Corporation for National and Community Service (Parts 1200—1299)

XIII  Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

XVI  Legal Services Corporation (Parts 1600—1699)

XVII  National Commission on Libraries and Information Science (Parts 1700—1799)

XVIII  Harry S. Truman Scholarship Foundation (Parts 1800—1899)

XXI  Commission on Fine Arts (Parts 2100—2199)

XXIII  Arctic Research Commission (Part 2301)

XXIV  James Madison Memorial Fellowship Foundation (Parts 2400—2499)

XXV  Corporation for National and Community Service (Parts 2500—2599)

Title 46—Shipping

I  Coast Guard, Department of Homeland Security (Parts 1—199)

II  Maritime Administration, Department of Transportation (Parts 200—399)
Title 46—Shipping—Continued

III Coast Guard (Great Lakes Pilotage), Department of Homeland Security (Parts 400—499)
IV Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

I Federal Communications Commission (Parts 0—199)
II Office of Science and Technology Policy and National Security Council (Parts 200—299)
III National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)
IV National Telecommunications and Information Administration, Department of Commerce, and National Highway Traffic Safety Administration, Department of Transportation (Parts 400—499)

Title 48—Federal Acquisition Regulations System

1 Federal Acquisition Regulation (Parts 1—99)
2 Defense Acquisition Regulations System, Department of Defense (Parts 200—299)
3 Department of Health and Human Services (Parts 300—399)
4 Department of Agriculture (Parts 400—499)
5 General Services Administration (Parts 500—599)
6 Department of State (Parts 600—699)
7 Agency for International Development (Parts 700—799)
8 Department of Veterans Affairs (Parts 800—899)
9 Department of Energy (Parts 900—999)
10 Department of the Treasury (Parts 1000—1099)
12 Department of Transportation (Parts 1200—1299)
13 Department of Commerce (Parts 1300—1399)
14 Department of the Interior (Parts 1400—1499)
15 Environmental Protection Agency (Parts 1500—1599)
16 Office of Personnel Management, Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)
17 Office of Personnel Management (Parts 1700—1799)
18 National Aeronautics and Space Administration (Parts 1800—1899)
19 Broadcasting Board of Governors (Parts 1900—1999)
20 Nuclear Regulatory Commission (Parts 2000—2099)
21 Office of Personnel Management, Federal Employees Group Life Insurance Federal Acquisition Regulation (Parts 2100—2199)
23 Social Security Administration (Parts 2300—2399)
24 Department of Housing and Urban Development (Parts 2400—2499)
25 National Science Foundation (Parts 2500—2599)
28 Department of Justice (Parts 2800—2899)
Title 48—Federal Acquisition Regulations System—Continued

29 Department of Labor (Parts 2900—2999)
30 Department of Homeland Security, Homeland Security Acquisition Regulation (HSAR) (Parts 3000—3099)
34 Department of Education Acquisition Regulation (Parts 3400—3499)
51 Department of the Army Acquisition Regulations (Parts 5100—5199)
52 Department of the Navy Acquisition Regulations (Parts 5200—5299)
53 Department of the Air Force Federal Acquisition Regulation Supplement [Reserved]
54 Defense Logistics Agency, Department of Defense (Parts 5400—5499)
57 African Development Foundation (Parts 5700—5799)
61 General Services Administration Board of Contract Appeals (Parts 6100—6199)
63 Department of Transportation Board of Contract Appeals (Parts 6300—6399)
99 Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

Title 49—Transportation

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)
Subtitle B—Other Regulations Relating to Transportation
I Pipeline and Hazardous Materials Safety Administration, Department of Transportation (Parts 100—199)
II Federal Railroad Administration, Department of Transportation (Parts 200—299)
III Federal Motor Carrier Safety Administration, Department of Transportation (Parts 300—399)
IV Coast Guard, Department of Homeland Security (Parts 400—499)
V National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)
VI Federal Transit Administration, Department of Transportation (Parts 600—699)
VII National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)
VIII National Transportation Safety Board (Parts 800—999)
X Surface Transportation Board, Department of Transportation (Parts 1000—1399)
XI Research and Innovative Technology Administration, Department of Transportation [Reserved]
XII Transportation Security Administration, Department of Homeland Security (Parts 1500—1899)

588
Title 50—Wildlife and Fisheries

I United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

III International Fishing and Related Activities (Parts 300—399)

IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)

V Marine Mammal Commission (Parts 500—599)

VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

CFR Index and Finding Aids

Subject/Agency Index
List of Agency Prepared Indexes
Parallel Tables of Statutory Authorities and Rules
List of CFR Titles, Chapters, Subchapters, and Parts
Alphabetical List of Agencies Appearing in the CFR
## Alphabetical List of Agencies Appearing in the CFR
(Revised as of October 1, 2009)

<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Committee of the Federal Register</td>
<td>1, I</td>
</tr>
<tr>
<td>Advanced Research Projects Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Advisory Council on Historic Preservation</td>
<td>36, VIII</td>
</tr>
<tr>
<td>African Development Foundation</td>
<td>22, XV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 57</td>
</tr>
<tr>
<td>Agency for International Development</td>
<td>22, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 7</td>
</tr>
<tr>
<td>Agricultural Marketing Service</td>
<td>7, I, IX, X, XI</td>
</tr>
<tr>
<td>Agricultural Research Service</td>
<td>7, V</td>
</tr>
<tr>
<td>Agriculture Department</td>
<td>5, LXXIII</td>
</tr>
<tr>
<td>Agricultural Marketing Service</td>
<td>7, I, IX, X, XI</td>
</tr>
<tr>
<td>Agricultural Research Service</td>
<td>7, V</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>7, III: 9, I</td>
</tr>
<tr>
<td>Chief Financial Officer, Office of</td>
<td>7, XXX</td>
</tr>
<tr>
<td>Commodity Credit Corporation</td>
<td>7, XIV</td>
</tr>
<tr>
<td>Cooperative State Research, Education, and Extension Service</td>
<td>7, XXXIV</td>
</tr>
<tr>
<td>Economic Research Service</td>
<td>7, XXXVII</td>
</tr>
<tr>
<td>Energy, Office of</td>
<td>2, IX: 7, XXXIX</td>
</tr>
<tr>
<td>Environmental Quality, Office of</td>
<td>7, XXXI</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>7, VII, XVIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 4</td>
</tr>
<tr>
<td>Federal Crop Insurance Corporation</td>
<td>7, IV</td>
</tr>
<tr>
<td>Food and Nutrition Service</td>
<td>7, II</td>
</tr>
<tr>
<td>Food Safety and Inspection Service</td>
<td>9, III</td>
</tr>
<tr>
<td>Foreign Agricultural Service</td>
<td>7, XV</td>
</tr>
<tr>
<td>Forest Service</td>
<td>36, II</td>
</tr>
<tr>
<td>Grain Inspection, Packers and Stockyards Administration</td>
<td>7, VIII: 9, II</td>
</tr>
<tr>
<td>Information Resources Management, Office of</td>
<td>7, XXVII</td>
</tr>
<tr>
<td>Inspector General, Office of</td>
<td>7, XXVI</td>
</tr>
<tr>
<td>National Agricultural Library</td>
<td>7, XLI</td>
</tr>
<tr>
<td>National Agricultural Statistics Service</td>
<td>7, XXXVI</td>
</tr>
<tr>
<td>Natural Resources Conservation Service</td>
<td>7, VI</td>
</tr>
<tr>
<td>Operations, Office of</td>
<td>7, XXVIII</td>
</tr>
<tr>
<td>Procurement and Property Management, Office of</td>
<td>7, XXXII</td>
</tr>
<tr>
<td>Rural Business-Cooperative Service</td>
<td>7, XVIII, XLII, L</td>
</tr>
<tr>
<td>Rural Development Administration</td>
<td>7, XLII</td>
</tr>
<tr>
<td>Rural Housing Service</td>
<td>7, XVIII, XXXV, L</td>
</tr>
<tr>
<td>Rural Telephone Bank</td>
<td>7, XVI</td>
</tr>
<tr>
<td>Rural Utilities Service</td>
<td>7, XVII, XVIII, XLII, L</td>
</tr>
<tr>
<td>Secretary of Agriculture, Office of</td>
<td>7, Subtitle A</td>
</tr>
<tr>
<td>Transportation, Office of</td>
<td>7, XXXIII</td>
</tr>
<tr>
<td>World Agricultural Outlook Board</td>
<td>7, XXXVIII</td>
</tr>
<tr>
<td>Air Force Department</td>
<td>32, VII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation Supplement</td>
<td>48, 53</td>
</tr>
<tr>
<td>Air Transportation Stabilization Board</td>
<td>14, VI</td>
</tr>
<tr>
<td>Alcohol and Tobacco Tax and Trade Bureau</td>
<td>27, I</td>
</tr>
<tr>
<td>Alcohol, Tobacco, Firearms, and Explosives, Bureau of AMTRAK</td>
<td>27, II</td>
</tr>
<tr>
<td>American Battle Monuments Commission</td>
<td>36, IV</td>
</tr>
<tr>
<td>American Indians, Office of the Special Trustee</td>
<td>25, VII</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>7, III: 9, I</td>
</tr>
<tr>
<td>Appalachian Regional Commission</td>
<td>5, IX</td>
</tr>
</tbody>
</table>
Agency

Architectural and Transportation Barriers Compliance Board 36, XI
Arctic Research Commission 45, XXIII
Army Department 5, XI
Army Corps of Engineers, Corps of 32, V
Federal Acquisition Regulation 48, XI
Benefits Review Board 20, VII
Bilingual Education and Minority Languages Affairs, Office of 34, V
People Who Are Blind or Severely Disabled, Committee for Purchase From 41, V
Broadcasting Board of Governors 22, V
Federal Acquisition Regulation 48, 19
Census Bureau 15, I
Centers for Medicare & Medicaid Services 42, IV
Chief Financial Officer, Office of 7, XXX
Child Support Enforcement, Office of 45, III
Children and Families, Administration for 45, II, III, IV, X
Civil Rights, Commission on 5, LXVIII, 45, VII
Civil Rights, Office for 34, I
Coast Guard 33, I: 46, I: 49, IV
Commerce Department 44, IV
Census Bureau 15, I
Economic Affairs, Under Secretary 37, V
Economic Analysis, Bureau of 15, VIII
Economic Development Administration 13, III
Emergency Management and Assistance 44, IV
Federal Acquisition Regulation 48, 13
Fishery Conservation and Management 50, VI
Foreign-Trade Zones Board 15, IV
Industry and Security, Bureau of 15, VII
International Trade Administration 15, III: 19, III
National Institute of Standards and Technology 15, II
National Marine Fisheries Service 50, II, IV, VI
National Oceanic and Atmospheric Administration 15, IX: 50, II, III, IV, VI
National Telecommunications and Information Administration 15, XXIII: 47, III
National Weather Service 15, IX
Patent and Trademark Office, United States 37, I
Productivity, Technology and Innovation, Assistant Secretary for 37, IV
Secretary for
Secretary of Commerce, Office of 15, Subtitle A
Technology, Under Secretary for 37, V
Technology Administration 15, XI
Technology Policy, Assistant Secretary for 37, IV
Commercial Space Transportation 14, III
Commodity Credit Corporation 7, XIV
Commodity Futures Trading Commission 5, XLI: 17, I
Community Planning and Development, Office of Assistant Secretary for 24, V, VI
Comptroller of the Currency 12, I
Construction Industry Collective Bargaining Commission 29, IX
Consumer Product Safety Commission 5, I: 16, II
Cooperative State Research, Education, and Extension Service 7, XXXIV
Copyright Office 37, II
Copyright Royalty Board 37, III
Corporation for National and Community Service 2, XXII: 45, XII, XXV
Cost Accounting Standards Board 48, 99
Council on Environmental Quality 40, V
Court Services and Offender Supervision Agency for the District of Columbia 28, VIII
Customs and Border Protection Bureau 19, I
Defense Contract Audit Agency 32, II
Defense Department 5, XXVI: 32, Subtitle A; 40, VII
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advanced Research Projects Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Air Force Department</td>
<td>32, VII</td>
</tr>
<tr>
<td>Army Department</td>
<td>32, V; 33, II; 36, III; 48, 51</td>
</tr>
<tr>
<td>Defense Acquisition Regulations System</td>
<td>48, 2</td>
</tr>
<tr>
<td>Defense Intelligence Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Logistics Agency</td>
<td>32, I, XII; 48, 54</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Human Resources Management and Labor Relations Systems</td>
<td>5, XCIX</td>
</tr>
<tr>
<td>National Imagery and Mapping Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Navy Department</td>
<td>32, VI; 48, 52</td>
</tr>
<tr>
<td>Secretary of Defense, Office of</td>
<td>2, XI; 32, I</td>
</tr>
<tr>
<td>Defense Contract Audit Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Intelligence Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Logistics Agency</td>
<td>32, XII; 48, 54</td>
</tr>
<tr>
<td>Defense Nuclear Facilities Safety Board</td>
<td>10, XVII</td>
</tr>
<tr>
<td>Delaware River Basin Commission</td>
<td>18, III</td>
</tr>
<tr>
<td>District of Columbia, Court Services and Offender Supervision Agency</td>
<td>28, VIII</td>
</tr>
<tr>
<td>Drug Enforcement Administration</td>
<td>21, II</td>
</tr>
<tr>
<td>East-West Foreign Trade Board</td>
<td>15, XIII</td>
</tr>
<tr>
<td>Economic Affairs, Under Secretary</td>
<td>37, V</td>
</tr>
<tr>
<td>Economic Analysis, Bureau of</td>
<td>15, VIII</td>
</tr>
<tr>
<td>Economic Development Administration</td>
<td>13, III</td>
</tr>
<tr>
<td>Economic Research Service</td>
<td>7, XXXVII</td>
</tr>
<tr>
<td>Education, Department of</td>
<td>5, LIII</td>
</tr>
<tr>
<td>Bilingual Education and Minority Languages Affairs, Office of</td>
<td>34, V</td>
</tr>
<tr>
<td>Civil Rights, Office for</td>
<td>34, I</td>
</tr>
<tr>
<td>Educational Research and Improvement, Office of</td>
<td>34, VII</td>
</tr>
<tr>
<td>Elementary and Secondary Education, Office of</td>
<td>34, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 34</td>
</tr>
<tr>
<td>Postsecondary Education, Office of</td>
<td>34, VI</td>
</tr>
<tr>
<td>Secretary of Education, Office of</td>
<td>34, Subtitle A</td>
</tr>
<tr>
<td>Special Education and Rehabilitative Services, Office of</td>
<td>34, III</td>
</tr>
<tr>
<td>Vocational and Adult Education, Office of</td>
<td>34, IV</td>
</tr>
<tr>
<td>Educational Research and Improvement, Office of</td>
<td>34, VII</td>
</tr>
<tr>
<td>Election Assistance Commission</td>
<td>11, II</td>
</tr>
<tr>
<td>Elementary and Secondary Education, Office of</td>
<td>34, II</td>
</tr>
<tr>
<td>Emergency Oil and Gas Guaranteed Loan Board</td>
<td>13, V</td>
</tr>
<tr>
<td>Emergency Steel Guarantee Loan Board</td>
<td>13, IV</td>
</tr>
<tr>
<td>Employee Benefits Security Administration</td>
<td>29, XXV</td>
</tr>
<tr>
<td>Employees' Compensation Appeals Board</td>
<td>20, IV</td>
</tr>
<tr>
<td>Employees Loyalty Board</td>
<td>5, V</td>
</tr>
<tr>
<td>Employment and Training Administration</td>
<td>20, V</td>
</tr>
<tr>
<td>Employment Standards Administration</td>
<td>20, VI</td>
</tr>
<tr>
<td>Endangered Species Committee</td>
<td>50, IV</td>
</tr>
<tr>
<td>Energy, Department of</td>
<td>5, XXIII; 10, II, III, X</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 9</td>
</tr>
<tr>
<td>Federal Energy Regulatory Commission</td>
<td>5, XXIV; 18, I</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 109</td>
</tr>
<tr>
<td>Energy, Office of</td>
<td>7, XXXIX</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Engraving and Printing, Bureau of</td>
<td>31, VI</td>
</tr>
<tr>
<td>Environmental Protection Agency</td>
<td>2, XV; 5, LIV; 40, I, IV, VII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 45</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 115</td>
</tr>
<tr>
<td>Environmental Quality, Office of</td>
<td>7, XXXI</td>
</tr>
<tr>
<td>Equal Employment Opportunity Commission</td>
<td>5, LXII; 29, XIV</td>
</tr>
<tr>
<td>Equal Opportunity, Office of Assistant Secretary for</td>
<td>24, I</td>
</tr>
<tr>
<td>Executive Office of the President</td>
<td>3, I</td>
</tr>
<tr>
<td>Administration, Office of</td>
<td>5, XV</td>
</tr>
<tr>
<td>Environmental Quality, Council on</td>
<td>40, V</td>
</tr>
<tr>
<td>Management and Budget, Office of</td>
<td>5, III; LXXVII; 14, VI; 48, 99</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>National Drug Control Policy, Office of</td>
<td>21, III</td>
</tr>
<tr>
<td>National Security Council</td>
<td>32, XXI; 47, 2</td>
</tr>
<tr>
<td>Presidential Documents</td>
<td>3</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of</td>
<td>32, XXIV; 47, II</td>
</tr>
<tr>
<td>Trade Representative, Office of the United States</td>
<td>15, XX</td>
</tr>
<tr>
<td>Export-Import Bank of the United States</td>
<td>2, XXXV; 5, LII; 12, IV</td>
</tr>
<tr>
<td>Family Assistance, Office of</td>
<td>45, II</td>
</tr>
<tr>
<td>Farm Credit Administration</td>
<td>5, XXXI; 12, VI</td>
</tr>
<tr>
<td>Farm Credit System Insurance Corporation</td>
<td>5, XXX; 12, XIV</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>7, VII; XVIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, I</td>
</tr>
<tr>
<td>Federal Aviation Administration</td>
<td>14, I</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>14, III</td>
</tr>
<tr>
<td>Federal Claims Collection Standards</td>
<td>31, IX</td>
</tr>
<tr>
<td>Federal Communications Commission</td>
<td>5, XXIX; 47, I</td>
</tr>
<tr>
<td>Federal Contract Compliance Programs, Office of</td>
<td>41, 69</td>
</tr>
<tr>
<td>Federal Crop Insurance Corporation</td>
<td>7, IV</td>
</tr>
<tr>
<td>Federal Deposit Insurance Corporation</td>
<td>5, XXII; 12, III</td>
</tr>
<tr>
<td>Federal Election Commission</td>
<td>11, I</td>
</tr>
<tr>
<td>Federal Emergency Management Agency</td>
<td>44, I</td>
</tr>
<tr>
<td>Federal Employees Group Life Insurance</td>
<td>48, 21</td>
</tr>
<tr>
<td>Federal Employees Health Benefits Acquisition Regulation</td>
<td>48, 16</td>
</tr>
<tr>
<td>Federal Energy Regulatory Commission</td>
<td>5, XXXIV; 18, I</td>
</tr>
<tr>
<td>Federal Financial Institutions Examination Council</td>
<td>12, XI</td>
</tr>
<tr>
<td>Federal Financing Bank</td>
<td>12, VIII</td>
</tr>
<tr>
<td>Federal Highway Administration</td>
<td>23, I, II</td>
</tr>
<tr>
<td>Federal Home Loan Mortgage Corporation</td>
<td>1, IV</td>
</tr>
<tr>
<td>Federal Housing Enterprise Oversight Office</td>
<td>12, XVII</td>
</tr>
<tr>
<td>Federal Housing Finance Agency</td>
<td>12, XII</td>
</tr>
<tr>
<td>Federal Housing Finance Board</td>
<td>12, IX</td>
</tr>
<tr>
<td>Federal Labor Relations Authority, and General Counsel of the</td>
<td>5, XIV; 22, XIV</td>
</tr>
<tr>
<td>Federal Labor Relations Authority</td>
<td></td>
</tr>
<tr>
<td>Federal Law Enforcement Training Center</td>
<td>31, VII</td>
</tr>
<tr>
<td>Federal Management Regulation</td>
<td>41, 102</td>
</tr>
<tr>
<td>Federal Maritime Commission</td>
<td>46, IV</td>
</tr>
<tr>
<td>Federal Mediation and Conciliation Service</td>
<td>29, XII</td>
</tr>
<tr>
<td>Federal Mine Safety and Health Review Commission</td>
<td>5, LXXXIV; 29, XXVII</td>
</tr>
<tr>
<td>Federal Motor Carrier Safety Administration</td>
<td>49, III</td>
</tr>
<tr>
<td>Federal Prison Industries, Inc.</td>
<td>28, III</td>
</tr>
<tr>
<td>Federal Procurement Policy Office</td>
<td>48, 99</td>
</tr>
<tr>
<td>Federal Property Management Regulations</td>
<td>41, 101</td>
</tr>
<tr>
<td>Federal Railroad Administration</td>
<td>49, II</td>
</tr>
<tr>
<td>Federal Register, Administrative Committee of the Federal Labor</td>
<td>1, I</td>
</tr>
<tr>
<td>Labor Relations Authority</td>
<td></td>
</tr>
<tr>
<td>Federal Register, Office of</td>
<td>1, II</td>
</tr>
<tr>
<td>Federal Reserve System</td>
<td>12, II</td>
</tr>
<tr>
<td>Board of Governors</td>
<td>5, LVIII</td>
</tr>
<tr>
<td>Federal Retirement Thrift Investment Board</td>
<td>5, VI, LXXVI</td>
</tr>
<tr>
<td>Federal Service Impasses Panel</td>
<td>5, XIV</td>
</tr>
<tr>
<td>Federal Trade Commission</td>
<td>5, XLVII; 16, I</td>
</tr>
<tr>
<td>Federal Transit Administration</td>
<td>49, VI</td>
</tr>
<tr>
<td>Federal Travel Regulation System</td>
<td>41, Subtitle F</td>
</tr>
<tr>
<td>Fine Arts, Commission on</td>
<td>45, XXI</td>
</tr>
<tr>
<td>Fiscal Service</td>
<td>31, II</td>
</tr>
<tr>
<td>Fish and Wildlife Service, United States</td>
<td>50, I, IV</td>
</tr>
<tr>
<td>Fishery Conservation and Management</td>
<td>50, VI</td>
</tr>
<tr>
<td>Food and Drug Administration</td>
<td>21, I</td>
</tr>
<tr>
<td>Food and Nutrition Service</td>
<td>7, II</td>
</tr>
<tr>
<td>Food Safety and Inspection Service</td>
<td>9, III</td>
</tr>
<tr>
<td>Foreign Agricultural Service</td>
<td>7, XV</td>
</tr>
<tr>
<td>Foreign Assets Control, Office of</td>
<td>31, V</td>
</tr>
<tr>
<td>Foreign Claims Settlement Commission of the United States</td>
<td>45, V</td>
</tr>
<tr>
<td>Foreign Service Grievance Board</td>
<td>22, IX</td>
</tr>
<tr>
<td>Foreign Service Impasse Disputes Panel</td>
<td>22, XIV</td>
</tr>
<tr>
<td>Foreign Service Labor Relations Board</td>
<td>22, XIV</td>
</tr>
<tr>
<td>Foreign-Trade Zones Board</td>
<td>15, IV</td>
</tr>
<tr>
<td>Forest Service</td>
<td>36, II</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>General Services Administration</td>
<td>5, LVII; 41, 105</td>
</tr>
<tr>
<td>Contract Appeals, Board of</td>
<td>48, 61</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 5</td>
</tr>
<tr>
<td>Federal Management Regulation</td>
<td>41, 102</td>
</tr>
<tr>
<td>Federal Property Management Regulations</td>
<td>41, 101</td>
</tr>
<tr>
<td>Federal Travel Regulation System</td>
<td>41, Subtitle F</td>
</tr>
<tr>
<td>General</td>
<td>41, 300</td>
</tr>
<tr>
<td>Payment From a Non-Federal Source for Travel Expenses</td>
<td>41, 304</td>
</tr>
<tr>
<td>Payment of Expenses Connected With the Death of Certain Employees</td>
<td>41, 303</td>
</tr>
<tr>
<td>Relocation Allowances</td>
<td></td>
</tr>
<tr>
<td>Temporary Duty (TDY) Travel Allowances</td>
<td></td>
</tr>
<tr>
<td>Geological Survey</td>
<td>30, IV</td>
</tr>
<tr>
<td>Government Accountability Office</td>
<td>4, I</td>
</tr>
<tr>
<td>Government Ethics, Office of</td>
<td>5, XVI</td>
</tr>
<tr>
<td>Government National Mortgage Association</td>
<td>24, III</td>
</tr>
<tr>
<td>Grain Inspection, Packers and Stockyards Administration</td>
<td>7, VIII: 9, II</td>
</tr>
<tr>
<td>Harry S. Truman Scholarship Foundation</td>
<td>45, XVIII</td>
</tr>
<tr>
<td>Health and Human Services, Department of</td>
<td>2, III; 5, XLV; 45, Subtitle A,</td>
</tr>
<tr>
<td>Centers for Medicare &amp; Medicaid Services</td>
<td>42, IV</td>
</tr>
<tr>
<td>Child Support Enforcement, Office of</td>
<td>45, III</td>
</tr>
<tr>
<td>Children and Families, Administration for</td>
<td>45, II, III, IV, X</td>
</tr>
<tr>
<td>Community Services, Office of</td>
<td>45, X</td>
</tr>
<tr>
<td>Family Assistance, Office of</td>
<td>45, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 3</td>
</tr>
<tr>
<td>Food and Drug Administration</td>
<td>21, I</td>
</tr>
<tr>
<td>Human Development Services, Office of</td>
<td>45, XIII</td>
</tr>
<tr>
<td>Indian Health Service</td>
<td>25, V</td>
</tr>
<tr>
<td>Inspector General (Health Care), Office of</td>
<td>42, V</td>
</tr>
<tr>
<td>Public Health Service</td>
<td>42, V</td>
</tr>
<tr>
<td>Refugee Resettlement, Office of</td>
<td>45, IV</td>
</tr>
<tr>
<td>Homeland Security, Department of</td>
<td>2, XXX; 6, I</td>
</tr>
<tr>
<td>Coast Guard</td>
<td>33, I; 46, I; 49, IV</td>
</tr>
<tr>
<td>Customs and Border Protection Bureau</td>
<td>46, III</td>
</tr>
<tr>
<td>Federal Emergency Management Agency</td>
<td>44, I</td>
</tr>
<tr>
<td>Human Resources Management and Labor Relations Systems</td>
<td>5, XCVII</td>
</tr>
<tr>
<td>Immigration and Customs Enforcement Bureau</td>
<td>19, IV</td>
</tr>
<tr>
<td>Immigration and Naturalization</td>
<td>8, I</td>
</tr>
<tr>
<td>Transportation Security Administration</td>
<td>49, XII</td>
</tr>
<tr>
<td>HOPE for Homeowners Program, Board of Directors of</td>
<td>24, XXIV</td>
</tr>
<tr>
<td>Housing and Urban Development, Department of</td>
<td>2, XXIV; 5, LXV; 24, Subtitle B</td>
</tr>
<tr>
<td>Community Planning and Development, Office of Assistant Secretary for</td>
<td>24, V, VI</td>
</tr>
<tr>
<td>Equal Opportunity, Office of Assistant Secretary for</td>
<td>24, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 24</td>
</tr>
<tr>
<td>Federal Housing Enterprise Oversight, Office of</td>
<td>12, XVII</td>
</tr>
<tr>
<td>Government National Mortgage Association</td>
<td>24, III</td>
</tr>
<tr>
<td>Housing—Federal Housing Commissioner, Office of Assistant Secretary for</td>
<td>24, II, VIII, X, XX</td>
</tr>
<tr>
<td>Housing, Office of, and Multifamily Housing Assistance</td>
<td>24, IV</td>
</tr>
<tr>
<td>Restructuring, Office of</td>
<td></td>
</tr>
<tr>
<td>Inspector General, Office of</td>
<td>24, XII</td>
</tr>
<tr>
<td>Public and Indian Housing, Office of Assistant Secretary for</td>
<td>24, IX</td>
</tr>
<tr>
<td>Secretary, Office of</td>
<td>24, Subtitle A, VII</td>
</tr>
<tr>
<td>Housing—Federal Housing Commissioner, Office of Assistant Secretary for</td>
<td>24, II, VIII, X, XX</td>
</tr>
<tr>
<td>Housing, Office of, and Multifamily Housing Assistance</td>
<td>24, IV</td>
</tr>
<tr>
<td>Restructuring, Office of</td>
<td></td>
</tr>
<tr>
<td>Human Development Services, Office of</td>
<td>45, XIII</td>
</tr>
<tr>
<td>Immigration and Customs Enforcement Bureau</td>
<td>19, IV</td>
</tr>
<tr>
<td>Immigration and Naturalization</td>
<td>8, I</td>
</tr>
<tr>
<td>Immigration Review, Executive Office for</td>
<td>8, V</td>
</tr>
<tr>
<td>Independent Counsel, Office of</td>
<td>28, VII</td>
</tr>
</tbody>
</table>

595
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment Standards Administration</td>
<td>20, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 29</td>
</tr>
<tr>
<td>Federal Contract Compliance Programs, Office of</td>
<td>41, 60</td>
</tr>
<tr>
<td>Federal Procurement Regulations System</td>
<td>41, 50</td>
</tr>
<tr>
<td>Labor-Management Standards, Office of</td>
<td>29, II, IV</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>30, I</td>
</tr>
<tr>
<td>Occupational Safety and Health Administration</td>
<td>29, XVII</td>
</tr>
<tr>
<td>Public Contracts</td>
<td>41, 50</td>
</tr>
<tr>
<td>Secretary of Labor, Office of</td>
<td>29, Subtitle A</td>
</tr>
<tr>
<td>Veterans' Employment and Training Service, Office of the Assistant</td>
<td>41, 61; 20, IX</td>
</tr>
<tr>
<td>Secretary for Wage and Hour Division</td>
<td>29, V</td>
</tr>
<tr>
<td>Workers' Compensation Programs, Office of</td>
<td>20, I</td>
</tr>
<tr>
<td>Labor-Management Standards, Office of</td>
<td>29, II, IV</td>
</tr>
<tr>
<td>Land Management, Bureau of</td>
<td>43, II</td>
</tr>
<tr>
<td>Legal Services Corporation</td>
<td>45, XVI</td>
</tr>
<tr>
<td>Library of Congress</td>
<td>36, VII</td>
</tr>
<tr>
<td>Copyright Office</td>
<td>37, II</td>
</tr>
<tr>
<td>Copyright Royalty Board</td>
<td>37, III</td>
</tr>
<tr>
<td>Local Television Loan Guarantee Board</td>
<td>7, XX</td>
</tr>
<tr>
<td>Management and Budget, Office of</td>
<td>5, III, LXXVII; 14, VI;</td>
</tr>
<tr>
<td>Marine Mammal Commission</td>
<td>50, V</td>
</tr>
<tr>
<td>Maritime Administration</td>
<td>46, II</td>
</tr>
<tr>
<td>Merit Systems Protection Board</td>
<td>5, II, LXIV</td>
</tr>
<tr>
<td>Micronesian Status Negotiations, Office of</td>
<td>32, XXVII</td>
</tr>
<tr>
<td>Millenium Challenge Corporation</td>
<td>22, XIII</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>30, I</td>
</tr>
<tr>
<td>Minerals Management Service</td>
<td>30, II</td>
</tr>
<tr>
<td>Minority Business Development Agency</td>
<td>15, XIV</td>
</tr>
<tr>
<td>Miscellaneous Agencies</td>
<td>1, IV</td>
</tr>
<tr>
<td>Monetary Offices</td>
<td>31, I</td>
</tr>
<tr>
<td>Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation</td>
<td>36, XVI</td>
</tr>
<tr>
<td>Museum and Library Services, Institute of</td>
<td>2, XXXI</td>
</tr>
<tr>
<td>National Aeronautics and Space Administration</td>
<td>2, XVIII; 5, LXIX; 14, V</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 18</td>
</tr>
<tr>
<td>National Agricultural Library</td>
<td>7, XLI</td>
</tr>
<tr>
<td>National Agricultural Statistics Service</td>
<td>7, XXXVI</td>
</tr>
<tr>
<td>National and Community Service Corporation for</td>
<td>45, XII, XXV</td>
</tr>
<tr>
<td>National Archives and Records Administration</td>
<td>2, XXVI; 5, LXVI; 36, XII</td>
</tr>
<tr>
<td>Information Security Oversight Office</td>
<td>32, XX</td>
</tr>
<tr>
<td>National Capital Planning Commission</td>
<td>1, IV</td>
</tr>
<tr>
<td>National Commission for Employment Policy</td>
<td>1, IV</td>
</tr>
<tr>
<td>National Commission on Libraries and Information Science</td>
<td>45, XVII</td>
</tr>
<tr>
<td>National Council on Disability</td>
<td>34, XII</td>
</tr>
<tr>
<td>National Counterintelligence Center</td>
<td>32, XVIII</td>
</tr>
<tr>
<td>National Credit Union Administration</td>
<td>12, VII</td>
</tr>
<tr>
<td>National Crime Prevention and Privacy Compact Council</td>
<td>28, IX</td>
</tr>
<tr>
<td>National Drug Control Policy, Office of</td>
<td>21, III</td>
</tr>
<tr>
<td>National Endowment for the Arts</td>
<td>2, XXXII</td>
</tr>
<tr>
<td>National Endowment for the Humanities</td>
<td>2, XXXIII</td>
</tr>
<tr>
<td>National Foundation on the Arts and the Humanities</td>
<td>45, XI</td>
</tr>
<tr>
<td>National Highway Traffic Safety Administration</td>
<td>23, II, III; 49, V</td>
</tr>
<tr>
<td>National Imagery and Mapping Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>National Indian Gaming Commission</td>
<td>25, III</td>
</tr>
<tr>
<td>National Institute for Literacy</td>
<td>34, XI</td>
</tr>
<tr>
<td>National Institute of Standards and Technology</td>
<td>15, II</td>
</tr>
<tr>
<td>National Intelligence, Office of Director of</td>
<td>32, XVII</td>
</tr>
<tr>
<td>National Labor Relations Board</td>
<td>5, LXI; 29, I</td>
</tr>
<tr>
<td>National Marine Fisheries Service</td>
<td>50, II, IV, VI</td>
</tr>
<tr>
<td>National Mediaion Board</td>
<td>29, X</td>
</tr>
<tr>
<td>National Oceanic and Atmospheric Administration</td>
<td>15, IX; 50, II, III, IV, VI</td>
</tr>
<tr>
<td>National Park Service</td>
<td>36, I</td>
</tr>
<tr>
<td>National Railroad Adjustment Board</td>
<td>29, III</td>
</tr>
<tr>
<td>National Railroad Passenger Corporation (AMTRAK)</td>
<td>49, VII</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>National Science Foundation</td>
<td>2, XXV; 5, XLIII; 45, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 25</td>
</tr>
<tr>
<td>National Security Council</td>
<td>32, XXI</td>
</tr>
<tr>
<td>National Security Council and Office of Science and Technology Policy</td>
<td>47, II</td>
</tr>
<tr>
<td>National Telecommunications and Information Administration</td>
<td>15, XXIII; 47, III</td>
</tr>
<tr>
<td>National Transportation Safety Board</td>
<td>49, VIII</td>
</tr>
<tr>
<td>Natural Resources Conservation Service</td>
<td>7, VI</td>
</tr>
<tr>
<td>Navajo and Hopi Indian Relocation, Office of</td>
<td>25, IV</td>
</tr>
<tr>
<td>Navy Department</td>
<td>32, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 52</td>
</tr>
<tr>
<td>Neighborhood Reinvestment Corporation</td>
<td>24, XXV</td>
</tr>
<tr>
<td>Northeast Interstate Low-Level Radioactive Waste Commission</td>
<td>10, XVIII</td>
</tr>
<tr>
<td>Nuclear Regulatory Commission</td>
<td>5, XLVIII; 10, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 20</td>
</tr>
<tr>
<td>Occupational Safety and Health Administration</td>
<td>29, XVII</td>
</tr>
<tr>
<td>Occupational Safety and Health Review Commission</td>
<td>29, XX</td>
</tr>
<tr>
<td>Offices of Independent Counsel</td>
<td>28, VI</td>
</tr>
<tr>
<td>Oklahoma City National Memorial Trust</td>
<td>36, XV</td>
</tr>
<tr>
<td>Operations Office</td>
<td>1, XXXVII</td>
</tr>
<tr>
<td>Overseas Private Investment Corporation</td>
<td>5, XXXIII; 22, VII</td>
</tr>
<tr>
<td>Patent and Trademark Office, United States</td>
<td>37, I</td>
</tr>
<tr>
<td>Payment From a Non-Federal Source for Travel Expenses</td>
<td>41, 304</td>
</tr>
<tr>
<td>Payment of Expenses Connected With the Death of Certain Employees</td>
<td>41, 303</td>
</tr>
<tr>
<td>Peace Corps</td>
<td>22, III</td>
</tr>
<tr>
<td>Pennsylvania Avenue Development Corporation</td>
<td>36, IX</td>
</tr>
<tr>
<td>Pension Benefit Guaranty Corporation</td>
<td>29, XL</td>
</tr>
<tr>
<td>Personnel Management, Office of</td>
<td>5, I, XXXV; 45, VIII</td>
</tr>
<tr>
<td>Human Resources Management and Labor Relations Systems, Department of Defense</td>
<td>5, XCIX</td>
</tr>
<tr>
<td>Human Resources Management and Labor Relations Systems, Department of Homeland Security</td>
<td>5, XCVII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 17</td>
</tr>
<tr>
<td>Federal Employees Group Life Insurance Federal Acquisition Regulation</td>
<td>48, 21</td>
</tr>
<tr>
<td>Federal Employees Health Benefits Acquisition Regulation</td>
<td>48, 16</td>
</tr>
<tr>
<td>Pipeline and Hazardous Materials Safety Administration</td>
<td>49, I</td>
</tr>
<tr>
<td>Postal Regulatory Commission</td>
<td>5, XLVII; 39, III</td>
</tr>
<tr>
<td>Postal Service, United States</td>
<td>5, LX; 39, I</td>
</tr>
<tr>
<td>Postsecondary Education, Office of</td>
<td>34, VI</td>
</tr>
<tr>
<td>President’s Commission on White House Fellowships</td>
<td>1, IV</td>
</tr>
<tr>
<td>Presidential Writs</td>
<td>3</td>
</tr>
<tr>
<td>Presidio Trust</td>
<td>36, X</td>
</tr>
<tr>
<td>Prisons, Bureau of</td>
<td>28, V</td>
</tr>
<tr>
<td>Procurement and Property Management, Office of</td>
<td>7, XXXII</td>
</tr>
<tr>
<td>Productivity, Technology and Innovation, Assistant Secretary</td>
<td>37, IV</td>
</tr>
<tr>
<td>Secretary</td>
<td></td>
</tr>
<tr>
<td>Public Contracts, Department of Labor</td>
<td>41, 50</td>
</tr>
<tr>
<td>Public and Indian Housing, Office of Assistant Secretary for</td>
<td>24, IX</td>
</tr>
<tr>
<td>Public Health Service</td>
<td>42, I</td>
</tr>
<tr>
<td>Railroad Retirement Board</td>
<td>20, II</td>
</tr>
<tr>
<td>Reclamation, Bureau of</td>
<td>43, I</td>
</tr>
<tr>
<td>Recovery Accountability and Transparency Board</td>
<td>4, II</td>
</tr>
<tr>
<td>Refugee Resettlement, Office of</td>
<td>45, IV</td>
</tr>
<tr>
<td>Relocation Allowances</td>
<td>41, 302</td>
</tr>
<tr>
<td>Research and Innovative Technology Administration</td>
<td>49, XI</td>
</tr>
<tr>
<td>Rural Business-Cooperative Service</td>
<td>7, XVIII, XLII, L</td>
</tr>
<tr>
<td>Rural Development Administration</td>
<td>7, XLII</td>
</tr>
<tr>
<td>Rural Housing Service</td>
<td>7, XVIII, XXXV, L</td>
</tr>
<tr>
<td>Rural Telephone Bank</td>
<td>7, XVI</td>
</tr>
<tr>
<td>Rural Utilities Service</td>
<td>7, XVII, XVIII, XLII, L</td>
</tr>
<tr>
<td>Saint Lawrence Seaway Development Corporation</td>
<td>33, IV</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of</td>
<td>32, XXIV</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of, and National Security Council</td>
<td>47, II</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>Secret Service</td>
<td>31, IV</td>
</tr>
<tr>
<td>Securities and Exchange Commission</td>
<td>17, II</td>
</tr>
<tr>
<td>Selective Service System</td>
<td>32, XVI</td>
</tr>
<tr>
<td>Small Business Administration</td>
<td>2, XXVII; 13, I</td>
</tr>
<tr>
<td>Smithsonian Institution</td>
<td>36, V</td>
</tr>
<tr>
<td>Social Security Administration</td>
<td>2, XXIII; 30, III; 48, 23</td>
</tr>
<tr>
<td>Soldiers’ and Airmen’s Home, United States</td>
<td>5, XI</td>
</tr>
<tr>
<td>Special Counsel, Office of</td>
<td>5, VIII</td>
</tr>
<tr>
<td>Special Education and Rehabilitative Services, Office of</td>
<td>34, III</td>
</tr>
<tr>
<td>State Department</td>
<td>2, VI; 22, I; 28, XI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 6</td>
</tr>
<tr>
<td>Surface Mining and Reclamation Appeals, Board of</td>
<td>30, III</td>
</tr>
<tr>
<td>Surface Mining Reclamation and Enforcement, Office of</td>
<td>30, VII</td>
</tr>
<tr>
<td>Surface Transportation Board</td>
<td>49, X</td>
</tr>
<tr>
<td>Susquehanna River Basin Commission</td>
<td>16, VIII</td>
</tr>
<tr>
<td>Technology Administration</td>
<td>15, XI</td>
</tr>
<tr>
<td>Technology Policy, Assistant Secretary for</td>
<td>37, IV</td>
</tr>
<tr>
<td>Technology, Under Secretary for</td>
<td>37, V</td>
</tr>
<tr>
<td>Tennessee Valley Authority</td>
<td>5, LXIX; 18, XIII</td>
</tr>
<tr>
<td>Thrift Supervision Office, Department of the Treasury</td>
<td>12, V</td>
</tr>
<tr>
<td>Trade Representative, United States, Office of</td>
<td>15, XX</td>
</tr>
<tr>
<td>Transportation, Department of</td>
<td>2, XII; 5, I</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>14, III</td>
</tr>
<tr>
<td>Contract Appeals, Board of</td>
<td>48, 63</td>
</tr>
<tr>
<td>Emergency Management and Assistance</td>
<td>44, IV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 12</td>
</tr>
<tr>
<td>Federal Aviation Administration</td>
<td>14, I</td>
</tr>
<tr>
<td>Federal Highway Administration</td>
<td>23, I; II</td>
</tr>
<tr>
<td>Federal Motor Carrier Safety Administration</td>
<td>49, III</td>
</tr>
<tr>
<td>Federal Railroad Administration</td>
<td>49, II</td>
</tr>
<tr>
<td>Federal Transit Administration</td>
<td>49, VI</td>
</tr>
<tr>
<td>Maritime Administration</td>
<td>46, II</td>
</tr>
<tr>
<td>National Highway Traffic Safety Administration</td>
<td>23, II; III; 49, V</td>
</tr>
<tr>
<td>Pipeline and Hazardous Materials Safety Administration</td>
<td>49, I</td>
</tr>
<tr>
<td>Saint Lawrence Seaway Development Corporation</td>
<td>33, IV</td>
</tr>
<tr>
<td>Secretary of Transportation, Office of</td>
<td>14, II; 49, Subtitle A</td>
</tr>
<tr>
<td>Surface Transportation Board</td>
<td>49, X</td>
</tr>
<tr>
<td>Transportation Statistics Bureau</td>
<td>49, XI</td>
</tr>
<tr>
<td>Transportation, Office of</td>
<td>7, XXXIII</td>
</tr>
<tr>
<td>Transportation Security Administration</td>
<td>49, XII</td>
</tr>
<tr>
<td>Transportation Statistics Bureau</td>
<td>49, XI</td>
</tr>
<tr>
<td>Travel Allowances, Temporary Duty (TDY)</td>
<td>41, 303</td>
</tr>
<tr>
<td>Treasury Department</td>
<td>5, XXI; 12, XV; 17, IV; 31, IX</td>
</tr>
<tr>
<td>Alcohol and Tobacco Tax and Trade Bureau</td>
<td>27, I</td>
</tr>
<tr>
<td>Community Development Financial Institutions Fund</td>
<td>12, XVIII</td>
</tr>
<tr>
<td>Comptroller of the Currency</td>
<td>12, I</td>
</tr>
<tr>
<td>Customs and Border Protection Bureau</td>
<td>19, I</td>
</tr>
<tr>
<td>Engraving and Printing, Bureau of</td>
<td>31, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 10</td>
</tr>
<tr>
<td>Federal Claims Collection Standards</td>
<td>31, IX</td>
</tr>
<tr>
<td>Federal Law Enforcement Training Center</td>
<td>31, VII</td>
</tr>
<tr>
<td>Fiscal Service</td>
<td>31, II</td>
</tr>
<tr>
<td>Foreign Assets Control, Office of</td>
<td>31, V</td>
</tr>
<tr>
<td>Internal Revenue Service</td>
<td>26, I</td>
</tr>
<tr>
<td>Investment Security, Office of</td>
<td>31, VIII</td>
</tr>
<tr>
<td>Monetary Offices</td>
<td>31, I</td>
</tr>
<tr>
<td>Secret Service</td>
<td>31, IV</td>
</tr>
<tr>
<td>Secretary of the Treasury, Office of</td>
<td>31, Subtitle A</td>
</tr>
<tr>
<td>Thrift Supervision, Office of</td>
<td>12, V</td>
</tr>
<tr>
<td>Truman, Harry S. Scholarship Foundation</td>
<td>45, XVIII</td>
</tr>
<tr>
<td>United States and Canada, International Joint Commission</td>
<td>22, IV</td>
</tr>
<tr>
<td>United States and Mexico, International Boundary and Water Commission, United States Section</td>
<td>22, XI</td>
</tr>
<tr>
<td>Utah Reclamation Mitigation and Conservation Commission</td>
<td>43, III</td>
</tr>
<tr>
<td>Veterans Affairs Department</td>
<td>2, VIII; 38, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 8</td>
</tr>
</tbody>
</table>

599
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veterans’ Employment and Training Service, Office of the Assistant</td>
<td>41, 61; 20, IX</td>
</tr>
<tr>
<td>Secretary for Vice President of the United States, Office of</td>
<td>32, XXVIII</td>
</tr>
<tr>
<td>Vocational and Adult Education, Office of</td>
<td>34, IV</td>
</tr>
<tr>
<td>Wage and Hour Division</td>
<td>29, V</td>
</tr>
<tr>
<td>Water Resources Council</td>
<td>18, VI</td>
</tr>
<tr>
<td>Workers’ Compensation Programs, Office of</td>
<td>20, I</td>
</tr>
<tr>
<td>World Agricultural Outlook Board</td>
<td>7, XXXVIII</td>
</tr>
</tbody>
</table>
Table of OMB Control Numbers

The OMB control numbers for chapter I of title 48 were consolidated into section 1.106. Section 1.106 is reprinted below for the convenience of the user.

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<table>
<thead>
<tr>
<th>FAR segment</th>
<th>OMB control No.</th>
</tr>
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<tbody>
<tr>
<td>3.103</td>
<td>9000–0018</td>
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<td>3.4</td>
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<tr>
<td>4.102</td>
<td>9000–0033</td>
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<tr>
<td>4.7</td>
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<tr>
<td>4.9</td>
<td>9000–0097</td>
</tr>
<tr>
<td>4.605</td>
<td>9000–0145</td>
</tr>
<tr>
<td>4.607</td>
<td>9000–0145</td>
</tr>
<tr>
<td>5.405</td>
<td>9000–0036</td>
</tr>
<tr>
<td>7.2</td>
<td>9000–0082</td>
</tr>
<tr>
<td>8.5</td>
<td>9000–0113</td>
</tr>
<tr>
<td>9.1</td>
<td>9000–0011</td>
</tr>
<tr>
<td>9.2</td>
<td>9000–0020</td>
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<tr>
<td>14.201</td>
<td>9000–0034</td>
</tr>
<tr>
<td>14.202–4</td>
<td>9000–0040</td>
</tr>
<tr>
<td>14.202–5</td>
<td>9000–0039</td>
</tr>
<tr>
<td>14.205</td>
<td>9000–0037</td>
</tr>
<tr>
<td>14.214</td>
<td>9000–0105</td>
</tr>
<tr>
<td>14.407</td>
<td>9000–0038</td>
</tr>
<tr>
<td>14.5</td>
<td>9000–0041</td>
</tr>
<tr>
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<td>9000–0034</td>
</tr>
<tr>
<td>15.4</td>
<td>9000–0013</td>
</tr>
<tr>
<td>15.404–1(f)</td>
<td>9000–0080</td>
</tr>
<tr>
<td>15.407–2</td>
<td>9000–0078</td>
</tr>
<tr>
<td>15.408</td>
<td>9000–0115</td>
</tr>
<tr>
<td>19.7</td>
<td>9000–0006</td>
</tr>
<tr>
<td>19.12</td>
<td>9000–0007</td>
</tr>
<tr>
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<td>9000–0065</td>
</tr>
<tr>
<td>22.201</td>
<td>1215–0072</td>
</tr>
<tr>
<td>22.104</td>
<td>9000–0066</td>
</tr>
<tr>
<td>22.105</td>
<td>1215–0072</td>
</tr>
<tr>
<td>22.11</td>
<td>1215–0072</td>
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<tr>
<td>22.14</td>
<td>1215–0072</td>
</tr>
<tr>
<td>23.9</td>
<td>9000–0139</td>
</tr>
<tr>
<td>23.602</td>
<td>9000–0107</td>
</tr>
<tr>
<td>27.3</td>
<td>9000–0095</td>
</tr>
<tr>
<td>27.4</td>
<td>9000–0090</td>
</tr>
<tr>
<td>28.1</td>
<td>9000–0045</td>
</tr>
<tr>
<td>29.304</td>
<td>9000–0059</td>
</tr>
<tr>
<td>30.6</td>
<td>9000–0129</td>
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</tbody>
</table>
1.106 48 CFR (10–1–09 Edition)

<table>
<thead>
<tr>
<th>FAR segment</th>
<th>OMB control No.</th>
<th>FAR segment</th>
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</tr>
</thead>
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<td>52.247-48</td>
<td>9000-0061</td>
<td></td>
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<td>52.247-51</td>
<td>9000-0057</td>
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<td>52.247-53</td>
<td>9000-0055</td>
<td></td>
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<td>9000-0061</td>
<td></td>
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<td>9000-0054</td>
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<td>9000-0061</td>
<td></td>
<td></td>
</tr>
<tr>
<td>52.247-68</td>
<td>9000-0056</td>
<td></td>
<td></td>
</tr>
<tr>
<td>52.248-1</td>
<td>9000-0027</td>
<td></td>
<td></td>
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<tr>
<td>52.248-2</td>
<td>9000-0027</td>
<td></td>
<td></td>
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<tr>
<td>52.248-3</td>
<td>9000-0027</td>
<td></td>
<td></td>
</tr>
<tr>
<td>52.249-2</td>
<td>9000-0028</td>
<td></td>
<td></td>
</tr>
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<td>9000-0028</td>
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<tr>
<td>52.249-6</td>
<td>9000-0028</td>
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<td>9000-0028</td>
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<td>9000-0029</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SF 24</td>
<td>9000-0045</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SF 25</td>
<td>9000-0045</td>
<td></td>
<td></td>
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<td>SF 1446</td>
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</table>

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations that were made by documents published in the FEDERAL REGISTER since January 1, 2001, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.


2001

48 CFR

<table>
<thead>
<tr>
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<th>66 FR</th>
</tr>
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<tbody>
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<td>52.101</td>
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<td>52.208-9</td>
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48 CFR—Continued

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**48 CFR—Continued**

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<tbody>
<tr>
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</tr>
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<td>52.222–3 Revised</td>
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**48 CFR—Continued**

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</thead>
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<td>52.244–6 Heading revised; clause amended</td>
<td>13204, 28098</td>
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Regulation at 68 FR 28098 eff. date corrected...

| 52.243–5 Clause amended       | 28087 |
| 52.245–4 Clause amended       | 28087 |
| 52.245–5 Clause amended       | 28087 |
| 52.245–11 Clause amended       | 28087 |
| 52.245–15 Clause amended      | 28087 |
| 52.246–17 Clause amended      | 28087 |
| 52.247–47 Revised             | 28088 |
| 52.247–55 Introductory text revised; clause amended | 28088 |
| 52.247–63 Clause amended      | 28088 |
| 52.247–64 Clause amended       | 13204, 28098 |

Regulation at 68 FR 28098 eff. date corrected...

| 52.254–2 Remved                | 69249 |
| 52.214 (e) removed             | 43857 |
| 52.228 (e) amended             | 28088 |
| 52.236–2 Heading revised; (b) and (c) removed; new (b) added; (d) redesignated as (c) | 69231 |
| 53 Authority citation revised | 28079, 43856, 69230, 69249 |
| 53.204–2 Removed               | 69249 |
| 52.208–9 Clause amended        | 34230 |
| 52.209–6 Clause amended        | 76349 |
| 52.211–2 Corrected             | 69231 |

**2004**

| 52.228–3 Introductory text revised | 28086 |
| 52.228–4 Introductory text revised | 28086 |
| 52.229–1 Introductory text revised | 28086 |
| 52.229–3 Clause amended           | 13205 |
| 52.229–4 Heading and introductory text revised; clause amended | 13205 |
| 52.229–5 Removed                  | 13205 |
| 52.229–6 Clause amended           | 28087 |
| 52.229–10 Introductory text and clause amended | 13205 |
| 52.232–16 Clause amended         | 13208 |
| 52.232–25 Regulation at 68 FR    | 32170 |
| Clause amended aff 10–31–03       | 56684 |
| 52.232–26 Clause amended eff. 10–31–03 | 56684 |
| 52.232–27 Clause amended eff. 10–31–03 | 56684 |
| 52.236–25 Revised                | 28087 |

**48 CFR—Continued**

<table>
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<th>Clause amended; eff. 10–31–03</th>
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<td>28087</td>
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<td>52.244–6 Heading revised; clause amended</td>
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Regulation at 68 FR 28098 eff. date corrected...

| 52.243–5 Clause amended       | 28087 |
| 52.245–4 Clause amended       | 28087 |
| 52.245–5 Clause amended       | 28087 |
| 52.245–11 Clause amended       | 28087 |
| 52.245–15 Clause amended      | 28087 |
| 52.246–17 Clause amended      | 28087 |
| 52.247–47 Revised             | 28088 |
| 52.247–55 Introductory text revised; clause amended | 28088 |
| 52.247–63 Clause amended      | 28088 |
| 52.247–64 Clause amended       | 13204, 28098 |

Regulation at 68 FR 28098 eff. date corrected...

| 52.254–2 Remved                | 69249 |
| 52.214 (e) removed             | 43857 |
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| 52.236–2 Heading revised; (b) and (c) removed; new (b) added; (d) redesignated as (c) | 69231 |
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| 52.208–9 Clause amended        | 34230 |
| 52.209–6 Clause amended        | 76349 |
| 52.211–2 Corrected             | 69231 |
### List of CFR Sections Affected

<table>
<thead>
<tr>
<th>Section</th>
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<tbody>
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<td>interim</td>
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<tr>
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<td>1055, 25279</td>
</tr>
<tr>
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<td>Regulation at 69</td>
</tr>
<tr>
<td></td>
<td>FR 1055 confirmed</td>
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<td>Clause amended</td>
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<td>76347</td>
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<td>52.212-5</td>
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<td>interim</td>
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<td>1055, 16150, 25279</td>
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<td>17770, 34240</td>
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<td>59700, 59704</td>
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### 48 CFR—Continued

**2005**

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**2006**

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Chapter 1

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Clause amended; interim

70 FR 57463
70 FR 33667
70 FR 57369
70 FR 36925
70 FR 211
70 FR 67774
### List of CFR Sections Affected

#### 48 CFR—Continued

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### 48 CFR—Continued

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**2007**

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</tr>
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<td>65882</td>
</tr>
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<td>52.204–10 Added</td>
<td>51310</td>
</tr>
<tr>
<td>52.212–1 Clause amended; interim</td>
<td>63081</td>
</tr>
<tr>
<td>52.212-3 Regulation at 71 FR 57373 confirmed</td>
<td>46327</td>
</tr>
<tr>
<td>Clause amended</td>
<td>46332</td>
</tr>
<tr>
<td>Clause amended; interim</td>
<td>46358, 63081</td>
</tr>
<tr>
<td>Regulation at 71 FR 36937 confirmed</td>
<td>46360</td>
</tr>
<tr>
<td>Regulation at 71 FR 67777 confirmed</td>
<td>46361</td>
</tr>
<tr>
<td>52.212–5 Regulation at 71 FR 36935 confirmed</td>
<td>13585</td>
</tr>
<tr>
<td>Clause amended; interim</td>
<td>36935, 63081, 63082</td>
</tr>
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<td>Clause amended</td>
<td>13585, 46348, 46363</td>
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</tbody>
</table>

### 48 CFR—Continued

| 52.212–5 Clause amended | 63089, 65873, 73217 |
| Regulation at 71 FR 36937 confirmed | 46360 |
| Regulation at 71 FR 67777 confirmed | 46361 |
| Regulation at 72 FR 13588 confirmed | 73218 |
| 52.213–4 Clause amended; interim | 13588, 63082 |
| Clause amended | 65873 |
| Regulation at 72 FR 13588 confirmed | 73218 |
| 52.215–2 Alternate I removed | 27389 |
| 52.215–15 Clause corrected; CFR correction | 55089 |
| 52.216–11 Introductory text amended | 27389 |
| 52.216–12 Introductory text amended | 27389 |
| 52.216–13 Removed | 27389 |
| 52.216–14 Removed | 27389 |
| 52.216–15 Introductory text amended | 27389 |
| 52.216–31 Introductory text amended | 6882 |
| 52.219–9 Clause amended | 46348, 63090 |
| 52.219–28 Added; interim | 36856 |
| 52.222–17 Removed | 27389 |
| 52.222–19 Clause amended; interim | 46358 |
| 52.222–26 Clause amended; interim | 13589 |
| Regulation at 72 FR 13588 confirmed | 73218 |
| 52.222–41 Heading revised; clause amended; interim | 36802 |
| 52.222–47 Regulation at 71 FR 36935 confirmed | 13585 |
| 52.222–48 Regulation at 71 FR 36935 confirmed | 13585 |
| Revised; interim | 63082 |
| 52.222–49 Regulation at 71 FR 36935 confirmed | 13585 |
| 52.222–50 Introductory text and clause amended; Alternate I added; interim | 46341 |
| 52.222–51 Added; interim | 63082 |
| 52.222–52 Added; interim | 63082 |
| 52.222–53 Added; interim | 63082 |
| 52.223–1 Added | 63045 |
| 52.223–2 Added | 63045 |
| 52.223–4 Amended | 63045 |
| 52.223–9 Prescription and Alternate I amended | 63045 |
| 52.223–10 Introductory text amended | 73218 |
## List of CFR Sections Affected

### 48 CFR—Continued

<table>
<thead>
<tr>
<th>Regulation at 71 FR</th>
<th>Page</th>
<th>48 CFR—Continued</th>
<th>72 FR</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>52.223–15 Added</td>
<td>65873</td>
<td>52.227–11 Revised</td>
<td>63066</td>
<td></td>
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<td>52.223–16 Added</td>
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<td>52.227–12 Removed</td>
<td>63068</td>
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</tr>
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<td>52.225–3 Clause amended; interim</td>
<td>46338</td>
<td>52.227–13 Revised</td>
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<td>52.227–14 Revised</td>
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<td>46361</td>
<td>52.227–15 Revised</td>
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<td>52.227–16 Introductory text amended</td>
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<td>46361</td>
<td>52.227–18 Introductory text and clause amended</td>
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<td>52.227–19 Revised</td>
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<td>52.227–20 Revised</td>
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<td>52.227–21 Revised</td>
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<td>52.227–22 Introductory text amended</td>
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<td>52.223–17 Alternate II amended</td>
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<td>52.223–18 Alternate II amended</td>
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<td></td>
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<td>57373 confirmed</td>
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<td>52.223–23 Alternate II amended</td>
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<td></td>
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<td>52.223–24 Alternate II amended</td>
<td>63068</td>
<td></td>
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<td>52.223–25 Alternate II amended</td>
<td>63068</td>
<td></td>
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<td>63065</td>
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<td>52.223–27 Alternate II amended</td>
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</tr>
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</tr>
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<td>63066</td>
<td>52.223–31 Alternate II amended</td>
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<td>63068</td>
<td></td>
</tr>
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<td></td>
</tr>
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</tr>
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<td>63068</td>
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<tr>
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<td>63068</td>
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<td></td>
</tr>
<tr>
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<td>52.223–38 Alternate II amended</td>
<td>63068</td>
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<tr>
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<td>52.223–39 Alternate II amended</td>
<td>63068</td>
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<tr>
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<td>63072</td>
<td>52.223–40 Alternate II amended</td>
<td>63068</td>
<td></td>
</tr>
<tr>
<td>52.227–18 Introductory text and clause amended</td>
<td>63073</td>
<td>52.223–41 Alternate II amended</td>
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</tbody>
</table>

**Total:** 613

---

List of CFR Sections Affected

48 CFR—Continued

52.223–15 Added | 65873
52.223–16 Added | 73218
52.225–3 Clause amended; interim | 46338
Regulation at 71 FR 36938 confirmed | 46360
Regulation at 71 FR 67778 confirmed | 46361
52.225–4 Clause amended; interim | 46338
Regulation at 71 FR 36938 confirmed | 46360
Regulation at 71 FR 67778 confirmed | 46361
52.225–5 Clause amended; interim | 46338
Regulation at 71 FR 36938 confirmed | 46360
Regulation at 71 FR 67778 confirmed | 46361
52.225–11 Clause and Alternate I amended; interim | 46358
Regulation at 71 FR 36938 confirmed | 46360
Regulation at 71 FR 67778 confirmed | 46361
52.225–12 Alternate II amended; interim | 46359
Regulation at 71 FR 36938 confirmed | 46360
Regulation at 71 FR 67778 confirmed | 46361
52.225–17 Introductory text amended | 63090
52.225–18 Regulation at 71 FR 57373 confirmed | 46327
52.226–3 Revised; interim | 63088
52.226–4 Revised; interim | 63088
52.226–5 Revised; interim | 63088
52.227–1 Clause and Alternates I and II amended | 63065
52.227–2 Clause amended | 63065
52.227–3 Introductory text revised; Alternates I, II and III amended | 63065
52.227–4 Revised | 63065
52.227–5 Introductory text amended | 63066
52.227–6 Introductory text revised; Alternate I amended | 63066
52.227–7 Introductory text amended | 63066
52.227–9 Introductory text revised | 63066
52.227–10 Introductory text revised; clause amended | 63066
### 48 CFR—Continued

<table>
<thead>
<tr>
<th>Section</th>
<th>Status/Amendment Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>52.245–17</td>
<td>Removed ...........................27394</td>
</tr>
<tr>
<td>52.245–18</td>
<td>Removed ...........................27394</td>
</tr>
<tr>
<td>52.245–19</td>
<td>Removed ...........................27394</td>
</tr>
<tr>
<td>52.246–10</td>
<td>Removed ...........................27394</td>
</tr>
<tr>
<td>52.249–11</td>
<td>Removed ...........................27394</td>
</tr>
<tr>
<td>52.249–12</td>
<td>Introductory text amended ..................27394</td>
</tr>
<tr>
<td>52.249–13</td>
<td>Removed ...........................27394</td>
</tr>
<tr>
<td>52.249–14</td>
<td>Introductory text revised ..................27394</td>
</tr>
<tr>
<td>52.250–1</td>
<td>Alternate I removed .................27394</td>
</tr>
<tr>
<td>53.213 (f)</td>
<td>amended ...........................63090</td>
</tr>
<tr>
<td>53.219 (a) and (b)</td>
<td>amended .........................27394</td>
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<td>Regulation at 71 FR 36935 confirmed ........13585</td>
</tr>
<tr>
<td>52.203–13</td>
<td>Clause amended .................67091</td>
</tr>
<tr>
<td>52.204–5</td>
<td>Introductory text amended; interim ...........21778</td>
</tr>
<tr>
<td>52.204–6</td>
<td>Introductory text and clause amended; interim ...........21778</td>
</tr>
<tr>
<td>52.204–7</td>
<td>Clause amended; interim ...................21778</td>
</tr>
<tr>
<td>52.208–9</td>
<td>Clause amended; eff. 10–17–08 .............53995</td>
</tr>
<tr>
<td>52.209–5</td>
<td>Heading revised; introductory text amended ..................21798</td>
</tr>
<tr>
<td>52.211–14</td>
<td>Heading and clause revised ..................21785</td>
</tr>
<tr>
<td>52.211–15</td>
<td>Clause amended; interim ...................21785</td>
</tr>
<tr>
<td>52.211–16</td>
<td>Clause amended; interim ...................21778, 33639</td>
</tr>
<tr>
<td>52.213–4</td>
<td>Clause amended; interim ...................10964</td>
</tr>
<tr>
<td>53.219–23</td>
<td>Clause amended; eff. 10–17–08 .............53993</td>
</tr>
<tr>
<td>52.223–9</td>
<td>Heading revised; clause and Alternate I amended ..........21790</td>
</tr>
<tr>
<td>52.223–17</td>
<td>Added ................................21790</td>
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<td>52.225–3</td>
<td>Regulation at 72 FR 46358 confirmed ........10965</td>
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<td>Regulation at 72 FR 46358 confirmed ........10965</td>
</tr>
<tr>
<td>53.219–25</td>
<td>Clause amended; interim ...................21783</td>
</tr>
<tr>
<td>52.226–2</td>
<td>Clause amended; interim ...................33640</td>
</tr>
<tr>
<td>52.226–3</td>
<td>Regulations at 71 FR 44548 and 72 FR 63088 confirmed; eff. 10–17–08 .............53996</td>
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</tbody>
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<table>
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<th>Section</th>
<th>Status/Amendment Details</th>
</tr>
</thead>
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<td>52.203–13</td>
<td>Clause amended .................67091</td>
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<tr>
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<td>Introductory text amended; interim ...........21778</td>
</tr>
<tr>
<td>52.204–6</td>
<td>Introductory text and clause amended; interim ...........21778</td>
</tr>
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<td>52.204–7</td>
<td>Clause amended; interim ...................21778</td>
</tr>
<tr>
<td>52.208–9</td>
<td>Clause amended; eff. 10–17–08 .............53995</td>
</tr>
<tr>
<td>52.209–5</td>
<td>Heading revised; introductory text amended ..................21798</td>
</tr>
<tr>
<td>52.211–14</td>
<td>Heading and clause revised ..................21785</td>
</tr>
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<td>52.211–15</td>
<td>Clause amended; interim ...................21785</td>
</tr>
<tr>
<td>52.211–16</td>
<td>Clause amended; interim ...................21778, 33639</td>
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</table>

Chapter 1—Continued

<table>
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<th>Status/Amendment Details</th>
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<tr>
<td>52.212–3</td>
<td>Regulation at 72 FR 46358 confirmed ........10965</td>
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<td>52.212–4</td>
<td>Clause and Alternate I amended; eff. 10–17–08 .............54005</td>
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<td>52.212–5</td>
<td>Clause amended; interim ...................10963, 21781, 33639</td>
</tr>
<tr>
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<td>Clause amended; interim ...................10964</td>
</tr>
<tr>
<td>52.219–9</td>
<td>Clause amended; interim ...................21781</td>
</tr>
<tr>
<td>52.219–23</td>
<td>Clause amended; eff. 10–17–08 .............53993</td>
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<td>Added; interim .........................33640</td>
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<td>Clause amended; eff. 10–17–08 .............53993</td>
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<td>52.226–3</td>
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**2008**

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<td>Added .........................33640</td>
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<td>Clause amended; eff. 10–17–08 .............53993</td>
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<td>Regulations at 71 FR 44548 and 72 FR 63088 confirmed; eff. 10–17–08 .............53996</td>
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### List of CFR Sections Affected

**48 CFR—Continued**

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<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
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<td>52.226-4</td>
<td>Regulations at 71 FR 44548 and 72 FR 63088 confirmed; eff. 10–17–08</td>
<td>53996</td>
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<td>Regulations at 71 FR 44548 and 72 FR 63088 confirmed; eff. 10–17–08</td>
<td>53996</td>
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<td>Clause amended; interim; eff. 10–17–08</td>
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<td>Clause amended; interim; eff. 10–17–08</td>
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<td>Clause amended; interim; eff. 10–17–08</td>
<td>54013</td>
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<td>Revised; eff. 10–17–08</td>
<td>54006</td>
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<td>Clause amended; eff. 10–17–08</td>
<td>54006</td>
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<td>52.232-26</td>
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<td>54007</td>
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<td>(a) and (d) amended</td>
<td>21785</td>
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</tr>
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<td>53.219</td>
<td>Revised; interim</td>
<td>21783</td>
</tr>
<tr>
<td>53.301-26</td>
<td>Revised; interim</td>
<td>21786</td>
</tr>
<tr>
<td>53.301-295</td>
<td>Removed; interim</td>
<td>21783</td>
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<td>53.301-1447</td>
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<td>21786</td>
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#### 2009

(Regulations published from January 1, 2009, through October 1, 2009)

**48 CFR**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>52.203-15</td>
<td>Added; interim</td>
<td>14636</td>
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**48 CFR—Continued**

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48 CFR (10–1–09 Edition)

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