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amount estimated and budgeted to the program organizations. 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 EVMS 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 paragraph (a), 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 upon the—

(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)

CHAPTER 12—DEPARTMENT OF TRANSPORTATION

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SUBCHAPTER A—GENERAL

PART 1201—FEDERAL ACQUISITION REGULATIONS SYSTEM

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AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1201.1—Purpose, Authority, Issuance

1201.101 Purpose.

The Department of Transportation (DOT) Acquisition Regulation (TAR) establishes uniform acquisition policies and procedures, which implement and supplement the Federal Acquisition Regulation (FAR).

1201.104 Applicability.

(a) Statute, the (FAR) Title 48, Code of Federal Regulations (CFR) chapter 1, and (TAR) 48 CFR chapter 12 apply to all acquisitions within the Department unless otherwise excluded by statute, the (FAR) 48 CFR chapter 1, or (TAR) 48 CFR chapter 12.

(b) The following order of precedence applies to resolve any question of applicability concerning an acquisition regulation or a procedure found within (TAR) 48 CFR chapter 12 or the Transportation Acquisition Manual (TAM):

(1) Statute;

(2) (FAR) 48 CFR chapter 1 or other applicable regulation;

(3) (TAR) 48 CFR chapter 12;

(4) DOT Orders; and

(5) TAM.

(c) The Maritime Administration may depart from the requirements of the (FAR) 48 CFR chapter 1 and (TAR) 48 CFR chapter 12 as authorized by 40 U.S.C. 113(e)(15) but shall adhere to those regulations to the maximum extent practicable. Exceptions from the requirements of the (FAR) 48 CFR chapter 1 and/or (TAR) 48 CFR chapter 12 shall be documented according to Maritime Administration procedures or in each contract file, as appropriate.

(d) The (FAR) 48 CFR chapter 1, (TAR) 48 CFR chapter 12 and TAM do not apply to the Federal Aviation Administration as provided by the Department of Transportation and Related Agencies Appropriations Act, 1996, Public Law 104–50, unless otherwise directed by the Office of the Secretary of Transportation.

1201.105 Issuance.

1201.105–1 Publication and code arrangement.

(a) The (TAR) 48 CFR chapter 12 is published in:

(1) The FEDERAL REGISTER; and

(2) Cumulative form in the CFR.

(b) The TAR is issued as chapter 12 of Title 48 of the CFR.

1201.105–2 Arrangement of regulations.

(a) *General*. The (TAR) 48 CFR chapter 12, which encompasses both Department and Operating Administration (OA)-specific guidance (see (TAR) 48 CFR 1201.3), conforms with the arrangement and numbering system prescribed by (FAR) 48 CFR 1.104. Guidance that is OA-specific contains the OA's acronym directly after the heading. The following acronyms apply:

FHWA—Federal Highway Administration
FMCSA—Federal Motor Carrier Safety Administration
FRA—Federal Railroad Administration
FTA—Federal Transit Administration
MARAD—Maritime Administration
NHTSA—National Highway Traffic Safety Administration
OST—Office of the Secretary
PHMSA—Pipeline and Hazardous Materials Safety Administration
RITA—Research and Innovative Technology Administration
SLSDC—Saint Lawrence Seaway Development Corporation

(b) *Numbering*—(1) *Departmentwide guidance*. (i) The numbering illustrations at (FAR) 48 CFR 1.105–2 apply to (TAR) 48 CFR chapter 12.

(ii) Coverage within (TAR) 48 CFR chapter 12 is identified by the prefix ''12'' followed by the complete (FAR) 48 CFR chapter 1 cite. For example, (TAR) 48 CFR 1201.201–1(b)).

(iii) Coverage in (TAR) 48 CFR chapter 12 that supplements (FAR) 48 CFR chapter 1 will use part, subpart, section and subsection numbers ending in ''70'' through ''89'' (e.g., (TAR) 48 CFR 1201.301–70). A series of numbers beginning with ''70'' is used for provisions and clauses.

(iv) Coverage in (TAR) 48 CFR chapter 12, other than that identified with a ''70'' or higher number, that implements the (FAR) 48 CFR chapter 1 uses the identical number sequence and caption of the (FAR) 48 CFR chapter 1 segment being implemented, which may be to the paragraph level. Paragraph numbers and letters are not always shown sequentially, but may be shown by the specific FAR paragraph implemented. For example, (TAR) 48 CFR 1201.201–1 contains only paragraph (b) because only this paragraph, correlated with FAR, implements (TAR) 48 CFR chapter 12.

(2) *Operating Administration-unique guidance*. Supplementary material for which there is no counterpart in (FAR) 48 CFR chapter 1 or (TAR) 48 CFR chapter 12 shall be identified using chapter, part, subpart, section, or subsection numbers of ''90'' and higher.

(c) *References and citations*. (TAR) 48 CFR chapter 12 may be referred to as the Department of Transportation Acquisition Regulation or the TAR. Cross reference to the FAR in (TAR) 48 CFR chapter 12 will be cited by ''FAR'' followed by the FAR numbered cite, and cross reference to the TAM in (TAR) 48 CFR chapter 12 will be cited by ''TAM'' followed by the TAM numbered cite. References to specific cites within (TAR) 48 CFR chapter 12 will be referenced by the numbered cite only.

[70 FR 6507, Feb. 7, 2005, as amended at 70 FR 76417, Dec. 27, 2005]

1201.105–3 Copies.

(a) Copies of the TAR in FEDERAL REGISTER, and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The electronic version of the FEDERAL REGISTER may be found at *http://www.nara.gov* and the CFR at *http://www.gpoaccess.gov*.

(b) The (TAR) 48 CFR chapter 12 and Transportation Acquisition Circulars (TACs) are available on the Internet at *http://www.dot.gov/ost/m60*.

1201.106 OMB Approval Under the Paperwork Reduction Act.

(a) *Data collection by regulation*. The information collection and recordkeeping requirements contained in (TAR) 48 CFR chapter 12 have been approved by the Office of Management and Budget (OMB).

(b) *Data collection under proposed contracts*. Under the regulations implementing the requirements of the Paperwork Reduction Act (5 CFR 1320), OMB must approve, prior to obligation of funds, proposed contracts which require the collection of information from ten or more non-Federal persons or entities. Solicitations requiring this level of information collection may be

released prior to OMB approval provided that:

(1) A statement is included in the solicitation to the effect that the contract will not be awarded until OMB approval of the information collection requirements of the proposed contract has been obtained; and

(2) Enough time is permitted to allow receipt of OMB approval prior to contract award.

Subpart 1201.2—Administration

1201.201 Maintenance of the FAR.

1201.201–1 The two councils.

(b) The SPE is responsible for providing a DOT representative to the Civilian Agency Acquisition Council (CAAC).

Subpart 1201.3—Agency Acquisition Regulations

1201.301 Policy.

(a)(1) *Acquisition regulations*—(i) *Departmentwide acquisition regulations.* The Department of Transportation's (DOT's) Senior Procurement Executive (SPE) is the individual having authority to issue or authorize the issuance of agency regulations that implement or supplement the FAR and to include agency-unique policies, etc. that govern the contracting process. This authority was re-delegated from the Assistant Secretary for Administration.

(ii) *Operating Administration (OA) acquisition regulations.* OA acquisition regulations, and any changes thereto, shall be reviewed and approved by the Senior Procurement Executive (SPE) for insertion into the (TAR) 48 CFR chapter 12 as a TAR supplemental regulation before the SPE submits the proposed coverage for publication in the FEDERAL REGISTER in accordance with (FAR) 48 CFR 1.501. OA regulations may be more restrictive or require higher approval levels than those permitted by (TAR) 48 CFR chapter 12 unless otherwise specified.

(2) *Acquisition procedures.* The SPE is the individual who issues or authorizes the issuance of internal agency guidance at any organizational level. DOT internal operating procedures are contained in the Transportation Acquisition Manual (TAM). OA procedures necessary to implement or supplement the (FAR) 48 CFR chapter 1, (TAR) 48 CFR chapter 12, or TAM may be issued by the Head of the Contracting Agency (HCA), who may delegate this authority to any organizational level deemed appropriate. OA procedures may be more restrictive or require higher approval levels than those permitted by the TAM unless otherwise specified.

(b) The authority of the agency head under (FAR) 48 CFR 1.301(b) to establish procedures to ensure that agency acquisition regulations are published for comment in the FEDERAL REGISTER in conformance with the procedures in FAR Subpart 1.5 is delegated to the Office of the General Counsel, Assistant General Counsel for Regulation and Enforcement (C–50).

1201.301–70 Amendment of (TAR) 48 CFR chapter 12.

(a) Changes to the regulation may be the result of recommendations from internal DOT personnel, other Government agencies, or the public. Changes shall be submitted in the following format to the Office of the Senior Procurement Executive (OSPE), 400 7th Street, SW., Washington, DC 20590:

(1) *Problem:* Succinctly state the problems created by current (TAR) 48 CFR chapter 12 language and describe the factual or legal reasons necessitating regulatory change.

(2) *Recommendation:* Identify the recommended change by using the current language (if applicable), and crossing out the deleted words with a horizontal line. Insert proposed language in brackets. If the change is extensive, deleted language may be displayed by forming a box with diagonal lines connecting the corners.

(3) *Discussion:* Explain why the change is necessary and how it will solve the problem. Address any cost or administrative impact on Government activities, offerors, and contractors. Provide any other information and documents such as statutes, legal decisions, regulations, reports, etc., that may be helpful.

(4) *Point of contact:* Provide a point of contact who can answer questions regarding the recommendation.

(b) The (TAR) 48 CFR chapter 12 is maintained by the SPE through the TAR/TAM change process. This process consists of input from various DOT elements including representatives from DOT OAs specifically designated to formulate Departmental acquisition policies and procedures.

(1) *Transportation Acquisition Circular (TAC)*. TACs (*see* (TAR) 48 CFR 1201.301–72) will be used to amend (TAR) 48 CFR chapter 12.

(2) *TAR Notice (TN)*. (i) TNs shall be issued when interim guidance is necessary and as often as may be necessary, under any of the following circumstances:

(A) To quickly promulgate selected material in a general or narrative manner, in advance of a TAC issuance;

(B) To disseminate other acquisition related information; or

(C) To issue guidance which may be effective for a period of 1 year or less.

(ii) Each TN will expire by a specific date.

1201.301–71 Effective date.

Unless otherwise stated, the following applies—

(a) Statements in TACs or TNs to the effect that the material therein is ''effective upon receipt,'' ''upon a specified date,'' or that changes set forth in the document are ''to be used upon receipt,'' mean that any new or revised provisions, clauses, procedures, or forms must be included in solicitations, contracts or modifications issued thereafter; and

(b) Unless expressly directed by statute or regulation, solicitations in process or completed negotiations when the TAC or TN is received, new information such as forms and clauses, need not be included if the chief of the contracting office determines that it would not be in the best interest of the Government to include the new information.

1201.301–72 TAC or TN numbering.

TACs and TNs will be numbered consecutively on a fiscal year basis beginning with number ''01'' prefixed by the last two digits of the fiscal year (e.g., TNs 04–01 and 04–02 indicate the first two TNs issued in fiscal year 2004).

1201.304 Agency control and compliance procedures.

(a) DOT shall control the proliferation of acquisition regulations and any revisions thereto (except as noted in paragraph (b) of this section) by using an internal (TAR) 48 CFR chapter 12 change process that involves input from many DOT elements including OA representatives on the Procurement Management Council. The OA member shall represent their OA's viewpoint along with Departmentwide considerations in reaching a decision on (TAR) 48 CFR chapter 12 changes.

(b) OA-unique regulations will not be processed through the TAR/TAM change process, but shall be reviewed by OA legal counsel and submitted to the OSPE for review and approval. (See (TAR) 48 CFR 1252.101 for additional instructions pertaining to provisions and clauses.)

Subpart 1201.4–70—Deviations From the FAR and TAR

1201.403 Individual deviations.

The Head of the Contracting Activity, or designee with a rank that is no lower than that of Senior Executive Service (SES) official or that of a Flag Officer, may authorize individual deviations (unless (FAR) 48 CFR 1.405(e) applies). However, see TAM 1201.403.

1201.404 Class deviations.

The SPE may grant in writing class deviations from the (FAR) 48 CFR chapter 1 and (TAR) 48 CFR chapter 12, unless (FAR) 48 CFR 1.405(e) applies.

Subpart 1201.6—Career Development, Contracting Authority and Responsibilities

1201.602–3 Ratification of unauthorized commitments.

(b) *Policy*. DOT policy requires that all procurement decisions shall be made only by Government officials having authority to carry out such acquisitions. Procurement decisions made by other than authorized personnel are contrary to Departmental policy and may be considered matters of serious misconduct on the part of the employee making an unauthorized

commitment. Disciplinary action against an employee who makes an unauthorized commitment may be considered.

1201.603–1 General.

Each DOT OA is responsible for appointing its contracting officers.

PART 1202—DEFINITIONS OF WORDS AND TERMS

Subpart 1202.1—Definitions

Sec.
1202.1 Definitions.

Subpart 1202.70—Internet Links

1202.7000 General.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1202.1—Definitions

1202.1 Definitions.

Agency, *Federal agency* or *Executive agency* means the Department of Transportation.

Chief Information Officer means the Director of the Office of the Chief Information Officer (CIO) (S–80).

Chief of the Contracting Office (COCO) means the individual(s) responsible for managing the contracting office(s) within an Operating Administration.

Contracting activity includes all the contracting offices within an Operating Administration and is the same as the term ''procuring activity.''

Contracting officer (CO) means an individual authorized by virtue of their position or by appointment to perform the functions assigned by the Federal Acquisition Regulation (FAR), the Transportation Acquisition Regulation (TAR) and Transportation Acquisition Manual (TAM).

Department of Transportation means all of the Operating Administrations included within the Department of Transportation (DOT).

Head of the agency or *agency head* for Departmental procurement means the Deputy Secretary except for acquisition actions that, by the terms of a statute or delegation, must be done specifically by the Secretary of Transportation.

Head of the Contracting Activity (HCA) means the individual responsible for managing the contracting offices within an Operating Administration who is a member of the Senior Executive Service or a flag officer and is the same as the term ''Head of the Procuring Activity.''

Head of the Operating Administration (HOA) means the individual appointed by the President to manage the operating administration.

Operating Administration (OA) means the following components of DOT:

(1) Federal Aviation Administration (FAA); (FAA is exempt from FAR, TAR and TAM pursuant to the Department of Transportation and Related Agencies Appropriations Act, 1996, Public Law 104–50;

(2) Federal Highway Administration (FHWA);

(3) Federal Motor Carrier Safety Administration (FMCSA);

(4) Federal Railroad Administration (FRA);

(5) Federal Transit Administration (FTA);

(6) Maritime Administration (MARAD);

(7) National Highway Traffic Safety Administration (NHTSA);

(8) Office of the Secretary of Transportation (OST);

(9) Pipeline and Hazardous Materials Safety Administration (PHMSA).

(10) Research and Innovative Technology Administration (RITA).

(11) Saint Lawrence Seaway Development Corporation (SLSDC).

Senior Procurement Executive (SPE) means the Director of the Office of the Senior Procurement Executive (M–60).

Small Business Specialist (SBS) means the individual appointed by each HCA to assist the Director, Office of the Small and Disadvantaged Business Utilization in carrying out the purpose of the Small Business Act.

[70 FR 6507, Feb. 7, 2005, as amended at 70 FR 76417, Dec. 27, 2005]

Subpart 1202.70—Internet Links

1202.7000 General.

Most documents cited throughout (TAR) 48 CFR chapter 12, can be found

on the internet. (TAR) 48 CFR chapter 12 will cite the corresponding internet address.

PART 1203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1203.1—Safeguards

Sec.
1203.101–3 Agency regulations.

Subpart 1203.2—Contractor Gratuities to Government Personnel

1203.203 Reporting suspected violations of the Gratuities clause.
1203.204 Treatment of violations.

Subpart 1203.3—Reports of Suspected Antitrust Violations

1203.301 General.
1203.303 Reporting suspected antitrust violations.

Subpart 1203.4—Contingent Fees

1203.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 1203.5—Other Improper Business Practices

1203.502 Subcontractor kickbacks.
1203.502–2 Subcontractor kickbacks.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1203.1—Safeguards

1203.101–3 Agency regulations.

(b) 5 CFR part 2635, Standards of Ethical Conduct for Employees of the Executive Branch, takes precedence over the DOT regulation at 49 CFR part 99.

Subpart 1203.2—Contractor Gratuities to Government Personnel

1203.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause shall be reported to the contracting officer responsible for the acquisition (or the COCO if the contracting officer is suspected of the violation). The contracting officer (or COCO) shall obtain from the person reporting the violation, and any witnesses to the violation, the following information:

(1) The date, time, and place of the suspected violation;

(2) The name and title (if known) of the individual(s) involved in the violation; and

(3) The details of the violation (e.g., the gratuity offered or intended) to obtain a contract or favorable treatment under a contract.

(b) The person reporting the violation and witnesses (if any) should be requested to sign and date the information certifying that the information furnished is true and correct.

(c) The COCO shall report suspected violations to the Office of the Inspector General (OIG) (J–1), 400 7th Street, SW., Washington, DC 20590, with a copy to General Counsel (C–1) and the OA's Chief Counsel.

1203.204 Treatment of violations.

(a) The HCA is authorized to determine whether a Gratuities clause violation has occurred. If the HCA has been personally and substantially involved in the procurement, Government legal counsel advice should be sought to determine if a substitute for the HCA should be designated.

(b) The COCO shall ensure that the contractor is afforded the hearing procedures required by (FAR) 48 CFR 3.204(b). Government legal counsel should be consulted regarding the appropriateness of the hearing procedures.

(c) If the HCA determines that the alleged gratuities violation occurred during the ''conduct of an agency procurement'' the COCO shall consult with Government legal counsel regarding the approach for appropriate processing of either the Procurement Integrity Act violation and/or the Gratuities violation.

Subpart 1203.3—Reports of Suspected Antitrust Violations

1203.301 General.

(b) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for suspected antitrust violations, except reports of suspected antitrust violations shall be coordinated with legal counsel for referral to the Department of Justice, if deemed appropriate.

1203.303 Reporting suspected antitrust violations.

(b) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for suspected antitrust violations, except reports of suspected antitrust violations shall be coordinated with legal counsel for referral to the Department of Justice, if deemed appropriate.

Subpart 1203.4—Contingent Fees

1203.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) and (b)(4) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for misrepresentation or violations of the covenant against contingent fees, except reports of misrepresentation or violations of the covenant against contingent fees shall be coordinated with legal counsel for referral to the Department of Justice, if deemed appropriate.

Subpart 1203.5—Other Improper Business Practices

1203.502 Subcontractor kickbacks.

1203.502–2 Subcontractor kickbacks.

(g) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for subcontractor kickbacks.

PART 1204—ADMINISTRATIVE MATTERS

Subpart 1204.1—Contract Execution

Sec.

1204.103 Contract clause.

Subpart 1204.8—Government Contract Files

1204.804–5 Procedures for closing out contract.
1204.804–570 Supporting closeout documents.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1204.1—Contract Execution

1204.103 Contract clause.

The contracting officer shall insert the clause at (FAR) 48 CFR 52.204–1, Approval of Contract, filled in as appropriate, in solicitations and contracts when approval to award the resulting contract must be obtained from an official at a level above the contracting officer.

Subpart 1204.8—Government Contract Files

1204.804–5 Procedures for closing out contract files.

1204.804–570 Supporting closeout documents.

(a) When applicable (see paragraphs (a)(1) through (4) of this section) and prior to contract closeout, the contracting officer shall obtain the listed DOT and Department of Defense (DOD) forms from the contractor to facilitate contract closeout.

(1) Form DOT F 4220.4, Contractor's Release, see (FAR) 48 CFR 52.216–7;

(2) Form DOT F 4220.45, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts, (FAR) 48 CFR 52.216–7;

(3) Form DOT F 4220.46, Cumulative Claim and Reconciliation Statement, see (FAR) 48 CFR 4.804–5(a)(13); and

(4) DD Form 882, Report of Inventions and Subcontracts *http://www.dior.whs.mil/forms/DD0882.PDF*, see (FAR) 48 CFR 52.227–14.

(b) The forms listed in paragraph (a) of this section are used primarily for the closeout of cost-reimbursement, time-and-materials, and labor-hour contracts. However, the forms may

also be used for closeout of other contract types or when necessary to protect the Government's interest.

SUBCHAPTER B—ACQUISITION PLANNING

PART 1205—PUBLICIZING CONTRACT ACTIONS

Subpart 1205.1—Dissemination of Information

Sec.
1205.101 Methods of disseminating information.

Subpart 1205.4—Release of Information

1205.402 General public.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1205.1—Dissemination Of Information

1205.101 Methods of disseminating information.

(b) The DOT Office of Small and Disadvantaged Business Utilization (S–40), 400 7th Street, SW., Washington, DC 20590 publishes a Procurement Forecast of planned procurements each fiscal year on their Web site at: *http://osdbuweb.dot.gov/business/procurement/forecast.html*.

Subpart 1205.4—Release of Information

1205.402 General public.

(a) Upon request, DOT will furnish the general public with the following information on proposed contracts and contract awards:

(1) Prior to the opening of sealed bids or the closing date for receipt of proposals, the names of firms invited to submit sealed bids or proposals;

(2) Prior to the opening of sealed bids or the closing date for receipt of proposals, the names of firms which attended pre-proposal or pre-bid conferences, if any;

(3) After the opening of sealed bids, names of firms which submitted bids; and

(4) After contract award, the names of firms which submitted proposals.

(b) Requests for other specific information shall be processed in accordance with the DOT Freedom of Information Act rules and regulations ((TAR) 48 CFR 1224.203).

PART 1206—COMPETITION REQUIREMENTS

Subpart 1206.5—Competition Advocates

Sec.
1206.501 Requirement.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1206.5—Competition Advocates

1206.501 Requirement.

The DOT Senior Competition Advocate (SCA) is the Deputy Assistant Secretary for Administration.

PART 1207—ACQUISITION PLANNING

Subpart 1207.3—Contractor Versus Government Performance

Sec.
1207.302 General.
1207.305 Solicitation provisions and contract clause.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1207.3—Contractor Versus Government Performance

1207.302 General.

DOT follows OMB Circular A–76, Performance of Commercial Activities, and (FAR) 48 CFR 7.3 when cost comparisons between Government and contractor performance are conducted.

1207.305 Solicitation provisions and contract clause.

The contracting officer may insert clause (TAR) 48 CFR 1252.237–73, Key

Personnel, in solicitations and contracts when the acquisition is conducted pursuant to OMB Circular A–76 and meets the clause prescription requirements at (TAR) 48 CFR 1237.110(b).

PART 1211—DESCRIBING AGENCY NEEDS

Subpart 1211.1—Selecting and Developing Requirements Documents

Sec.

1211.101 Order of precedence for requirements documents.

Subpart 1211.2—Using and Maintaining Requirements Documents

1211.204–70 Solicitation provisions and contract clauses.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1211.1—Selecting and Developing Requirements Documents

1211.101 Order of precedence for requirements documents.

Safeguards to ensure safety, security (including sensitive information and information technology security) and environmental protection shall be included, as applicable, in requirements documents.

Subpart 1211.2—Using and Maintaining Requirements Documents

1211.204–70 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.211–70, Index for Specifications, when an index or table of contents may be furnished with the specification.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1213—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 1213.71—Department of Transportation Procedures for Acquiring Training Services

Sec.
1213.7100 Applicability.
1213.7101 Solicitation provision and contract clause.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1213.71—Department of Transportation Procedures for Acquiring Training Services

1213.7100 Applicability.

(a) DOT policy at (TAR) 48 CFR 1237.7000 also applies to the Standard Form (SF) 182, Request, Authorization, Agreement and Certification of Training, which may be used to acquire training services; however, the policy does not apply to training services acquired by the Government purchase/credit card. The Government purchase/credit card can only be used to acquire training services valued at $2,500 or less.

(b) As reflected in (TAR) 48 CFR 1237.7002, this policy does not apply to training attended by DOT employees which is scheduled and conducted by Government sources of supply, educational institutions, or private entities where DOT does not control or sponsor the training. Examples of when the policy does and does not apply include:

(1) When SF 182s are issued for three DOT employees to attend a one week course at a university or other private entity, the policy does not apply. DOT does not control this course because the university or private entity has a contract in place with the training provider and DOT is placing an order under an existing contract; and

(2) When DOT awards a contract to a university or other private entity to provide training for DOT and/or other Government personnel, the policy applies. DOT controls this course; therefore, no soliciting or advertising of private non-Government training while conducting the contracted-for training is permitted.

1213.7101 Solicitation provision and contract clause.

(a) Contracting officers shall insert the provision at (TAR) 48 CFR 1252.237–71, Certification of Data, in all solicitations and requests for quotations, and the clause at (TAR) 48 CFR 1252.237–72, Prohibition on Advertising, in solicitations, requests for quotations, and all contracts (e.g., purchase orders, SF 182s) for training services when the content and/or presentation of the training is controlled by DOT. (NOTICE: The Secretary of Transportation has determined that the certification required by (TAR) 48 CFR 1252.237–71 shall be retained in accordance with Section 4301(b)(1)(B)(i)(II) of the Federal Acquisition Reform Act (Public Law 104–106, 41 U.S.C. 425, note) and *DOT Memorandum dated July 17, 1996*.)

(b) Contracting officers shall incorporate the successful offeror's certified data into any resultant contract(s). Certified data may be adopted by reference, if the contracting officer determines it contains information sufficient to reliably describe the certified data submitted. For example, this type of information includes dated material such as resumes and company or personnel qualifications.

PART 1214—SEALED BIDDING

Subpart 1214.3—Submission of Bids

Sec.
1214.302 Bid submission.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1214.3—Submission of Bids

1214.302 Bid submission.

(b)(1) Contracting officers may permit telegraphic bids to be communicated by means of a telephone call from the telegraph office to the designated office provided that procedures and controls have been established by the COCO for receiving and safeguarding these incoming bids.

PART 1215—CONTRACTING BY NEGOTIATION

Subpart 1215.2—Solicitation and Receipt of Proposals and Information

Sec.
1215.207 Handling proposals and information.

Subpart 1215.4—Contract Pricing

1215.404 Proposal analysis.
1215.404–470 Payment of profit or fee.

Subpart 1215.6—Unsolicited Proposals

1215.602 Policy.
1215.603 General.
1215.604 Agency points of contact.
1215.606 Agency procedures.
1215.606–1 Receipt and initial review.
1215.606–2 Evaluation.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1215.2—Solicitation and Receipt of Proposals and Information

1215.207 Handling proposals and information.

(a) Offeror's proposals and information received in response to a request for information shall be marked as required by TAM 1203.104–4, as applicable.

(b) Proposals may be released outside the Government whenever it is the only means of receiving the most competent technical and/or management evaluation available.

Subpart 1215.4—Contract Pricing

1215.404 Proposal analysis.

1215.404–470 Payment of profit or fee.

The contracting officer shall not pay profit or fee on undefinitized contracts or undefinitized contract modifications. Any profit or fee earned shall be paid after the contract or modification is definitized.

Subpart 1215.6—Unsolicited Proposals

1215.602 Policy.

DOT's policy encourages submission of new and innovative ideas that will support DOT's mission. Through the various Operating Administrations (OAs), DOT is responsible for transportation safety improvements, international transportation agreements and the continuity of transportation services in the public interest.

1215.603 General.

DOT will accept unsolicited proposals from any entity for review and consideration. However, DOT will not pay any costs associated with the preparation of these proposals. Proposals that do not meet the definition and applicable content and marking requirements of (FAR) 48 CFR 15.6 will not be considered under any circumstances and will be returned to the submitter.

1215.604 Agency points of contact.

(a) The DOT does not have a centralized location to receive unsolicited proposals. The type of effort submitted in the proposal determines which DOT OA should receive and evaluate the proposal.

(b) Unsolicited proposals should be submitted to the responsible OA contracting office for appropriate handling. Specific information concerning the mission of each DOT OA is available on the worldwide web at *http://www.dot.gov*. Prospective contractors are urged to contact these contracting/procurement offices prior to submitting a proposal to ensure that the unsolicited proposal reaches the correct

contracting office for action. This action will reduce unnecessary paperwork and wasted time for both the Government and the prospective contractors.

1215.606 Agency procedures.

(a) The Chief of the Contracting Office is responsible for establishing procedures for controlling unsolicited proposals received in the contracting office. Within ten working days after receipt of an unsolicited proposal, the contracting office shall review the proposal and determine whether the proposal meets the content and marking requirements of (FAR) 48 CFR 15.6. If the proposal does not meet these requirements, it shall be returned to the submitter giving the reasons for noncompliance.

(b) The OA contracting office is the designated point of contact for receipt and handling of unsolicited proposals. Persons within DOT who receive unsolicited proposals, such as technical personnel, shall forward the document to their responsible contracting office.

1215.606–1 Receipt and initial review.

(a) The agency contact point must make an initial review determination within seven calendar days after receiving a proposal.

(b) If the proposal meets the requirements at (FAR) 48 CFR 15.606–1(a), the agency contact point must acknowledge receipt within three calendar days after making the initial review determination and advise the offeror of the general timeframe for completing the evaluation.

(c) If the proposal does not meet the requirements of (FAR) 48 CFR 15.606–1(a), the agency contact point must return the proposal within three calendar days after making the determination. The agency point of contact must inform the offeror, in writing, of the reasons for returning the proposal.

1215.606–2 Evaluation.

(a) Comprehensive evaluations should be completed within sixty calendar days after making the initial review determination. If additional time is needed, then the agency contact point shall advise the offeror accordingly and provide a new evaluation completion date. The evaluating office must neither reproduce nor disseminate the proposal to other offices without the consent of the contracting office from which the proposal was received for evaluation. If additional information from the offeror is required by the evaluating office, the evaluator must convey this request to the responsible contracting office. The evaluator shall not directly contact the proposal originator.

(b) If the evaluator recommends acceptance of the proposal, the responsible contracting officer shall ensure compliance with all of the requirements of (FAR) 48 CFR 15.607.

PART 1216—TYPES OF CONTRACTS

Subpart 1216.2—Fixed-Price Contracts

Sec.
1216.203 Fixed-price contracts with economic price adjustment.
1216.203–4 Contract clauses.
1216.203–470 Solicitation provision.

Subpart 1216.4—Incentive Contracts

1216.406–70 DOT contract clauses.

Subpart 1216.5—Indefinite-Delivery Contracts

1216.505 Ordering.

Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1216.603 Letter contracts.
1216.603–4 Contract clauses.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1216.2—Fixed-Price Contracts

1216.203 Fixed-price contracts with economic price adjustment.

1216.203–4 Contract clauses.

1216.203–470 Solicitation provision.

The contracting officer shall insert the provision at (TAR) 48 CFR 1252.216–70, Evaluation of Offers Subject to an Economic Price Adjustment Clause, in solicitations containing an economic price adjustment clause.

Subpart 1216.4—Incentive Contracts

1216.406–70 DOT contract clauses.

(a) As authorized by (FAR) 48 CFR 16–406(e), the contracting officer shall insert the clause at (TAR) 48 CFR 1252.216–71, Determination of Award Fee, in all cost-plus-award-fee solicitations and contracts.

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216–72, Performance Evaluation Plan, in all cost-plus-award-fee solicitations and contracts.

(c) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216–73, Distribution of Award Fee, in all cost-plus-award-fee solicitations and contracts.

Subpart 1216.5—Indefinite-Delivery Contracts

1216.505 Ordering.

(b)(5) Unless otherwise designated by the Head of the Operating Administration, the Competition Advocate for the Operating Administration (OA) is designated as the OA Task and Delivery Order Ombudsman. If any corrective action is needed after reviewing complaints from contractors on task and delivery order contracts, the OA Ombudsman shall provide a written determination of such action to the contracting officer. Issues that cannot be resolved within the OA, shall be forwarded to the DOT Task and Delivery Order Ombudsman for review and resolution. The DOT Task and Delivery Order Ombudsman is located in the Office of the Senior Procurement Executive.

Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1216.603 Letter contracts.

1216.603–4 Contract clauses.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216–74, Settlement of Letter Contract, in all definitized letter contracts.

PART 1217—SPECIAL CONTRACTING METHODS

Subpart 1217.70—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

Sec.
1217.7000 Definition.
1217.7001 Clauses.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1217.70—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

1217.7000 Definition.

Lay Days means the time allowed to the master of a vessel for loading and unloading the same.

1217.7001 Clauses.

(a) The clause at (TAR) 48 CFR 1252.217–70, Guarantee, shall be used where general guarantee provisions are deemed desirable by the contracting officer.

(1) When inspection and acceptance tests will afford full protection to the Government in ascertaining conformance to specifications and the absence of defects and deficiencies, no guarantee clause for that purpose shall be included in the contract.

(2) The customary guarantee period, to be inserted in the first sentence of the clause at (TAR) 48 CFR 1252.217–70, Guarantee, is 60 days. In certain instances, it may be advisable for the contracting officer to include a contract clause for a guarantee period longer than 60 days. These instances are as follows:

(i) If, as result of a full inquiry, the contracting officer determines that there will be no increased costs as a result of a longer guarantee period, the contracting officer may substitute guarantee longer than the usual 60 days; or

(ii) When the contracting officer's inquiry discloses that increased costs will result or are expected to result from a longer guarantee period, the

contracting officer shall submit a letter to the Chief of the Contracting Office, requesting approval for use of guarantee period in excess of 60 days. The letter must contain sufficient facts to justify the use of a longer guarantee period. Upon approval, the contracting officer may insert a longer period in the first sentence of the clause at (TAR) 48 CFR 1252.217–70, Guarantee.

(b) The following clauses are required:

(1) (TAR) 48 CFR 1252.217–71 through (TAR) 48 CFR 1252.217–74; and,

(2) (TAR) 48 CFR 1252.217–76 through (TAR) 48 CFR 1252.217–80.

(c) (TAR) 48 CFR 1252.217–75 may be included in sealed bid fixed-price solicitations and contracts for vessel repair, alteration, or conversion which are to be performed within the United States, its possessions, or Puerto Rico.

(d) Unless inappropriate, the clauses set forth in (TAR) 48 CFR 1252.217–71 through (TAR) 48 CFR 1252.217–74 and (TAR) 48 CFR 1252.217–76 through (TAR) 48 CFR 1252.217–80 shall be included.

(e) (TAR) 48 CFR 1252.217–75 may be included in negotiated solicitations and contracts to be performed outside the United States.

[70 FR 6507, Feb. 7, 2005, as amended at 70 FR 76417, Dec. 27, 2005]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1219—SMALL BUSINESS PROGRAMS

Subpart 1219.2—Policies

Sec.
1219.201 General policy.

Subpart 1219.8—Contracting with the Small Business Administration (The 8(a) Program)

1219.800 General.
1219.811–3 Contract clauses.
1219.812 Contract administration.

Subpart 1219.10—Small Business Competitiveness Demonstration Program

1219.1003 Purpose.
1219.1005 Applicability.
APPENDIX A TO PART 1219—TARGETED INDUSTRY CATEGORIES

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1219.2—Policies

1219.201 General policy.

(c) The Director, Office of Small and Disadvantaged Business Utilization (S–40), is responsible for carrying out the functions and duties in sections 8, 15, and 31 of the Small Business Act, as amended. (15 U.S.C. 637, 644, and 657.)

Subpart 1219.8—Contracting with the Small Business Administration (The 8(a) Program)

1219.800 General.

(f) The Small Business Administration (SBA) and DOT have entered into a Partnership Agreement (PA) authorizing DOT contracting officers to enter into direct 8(a) contracts on behalf of SBA.

1219.811–3 Contract clauses.

(d)(3) When an acquisition is processed pursuant to the DOT/SBA Partnership Agreement, the contracting officer shall use the clause at (FAR) 48 CFR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, with its Alternate III, (TAR) 48 CFR 1252.219–72.

(f) The contracting officer shall insert the clause at 1252.219–71, Section 8(a) Direct Awards, in all solicitations and contracts processed under the PA. In accordance with the CAAC Letter 98–3, the following FAR clauses shall not be used when processing a Direct 8(a) award under the MOU: (FAR) 48 CFR 52.219–11, Special 8(a) Contract Conditions, (FAR) 48 CFR 52.219–12, Special 8(a) Subcontract Conditions, and (FAR) 48 CFR 52.219–17, Section 8(a) Award.

1219.812 Contract administration.

(d) All direct 8(a) awards made pursuant to the PA are subject to 15 U.S.C. 637(a) (21). These contracts contain the clause at (TAR) 48 CFR 1252.219–71, Section 8(a) Direct Award, which requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

Subpart 1219.10—Small Business Competitiveness Demonstration Program

1219.1003 Purpose.

(b) Contracting officers shall use the targeted industry categories listed at (TAR) 48 CFR 1219.1005(b) to expand small business participation in the small business competitive demonstration program.

1219.1005 Applicability.

(b) *Targeted industry categories*. DOT's targeted industry categories are shown in appendix A to this part.

APPENDIX A TO PART 1219

Targeted industry categories*	FPDS products and service code
(1) Engineering Development	AT94
(2) Systems Engineering Services (Only).	R414
(3) Radio/TV Communication Equipment (except airborne).	5820

Targeted industry categories*	FPDS products and service code
(4) Maintenance, Repair, and Rebuilding of engines, turbines, components and weapons equipment.	J028/J010
(5) ADP Central Processing Units:	
Analog	7020
Digital	7021
Hybrid	7022
(6) ADP Support Equipment	7035
(7) ADP Components	7050
(8) ADP Development Services and ADP Teleprocessing and Timesharing Services.	D302/D305
(9) Gas Turbines and Jet Engines, Aircraft; and Components.	2840
(10) Radar Equipment (except airborne) and Navigation and Navigational Aids (basic research).	5840/AT31

*The industry categories were derived from Federal Procurement Data System Product and Service Codes Manual.

PART 1222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1222.1—Basic Labor Policies

Sec.
1222.101 Labor relations.
1222.101–70 Admittance of union representatives to DOT installations.
1222.101–71 Contract clauses.

Subpart 1222.4—Labor Standards for Contracts Involving Construction

1222.406 Administration and enforcement.
1222.406–9 Withholding from or suspension of contract payments.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1222.1—Basic Labor Policies

1222.101 Labor relations.

1222.101–70 Admittance of union representatives to DOT installations.

(a) It is DOT policy to admit labor union representatives of contractor employees to DOT installations to visit work sites and transact labor union business with contractors, their employees, or union stewards pursuant to existing union collective bargaining agreements. Their presence shall not interfere with the contractor's work progress under a DOT contract nor violate the safety or security regulations that may be applicable to persons visiting the installation. The union representatives will not be permitted to conduct meetings, collect union dues, or make speeches concerning union matters while visiting a work site.

(b) Whenever a union representative is denied entry to a work site, the person denying entry shall make a written report to the DOT labor coordinator, the Office of the General Counsel, Office of Environmental Law, Civil Rights and General Law (C–10), within the Office of the Secretary of Transportation or corresponding OA labor advisor, within two working days after the request for entry is denied. The report shall include the reason(s) for the denial, the name of the representative denied entry, the union affiliation and number, and the name and title of the person that denied the entry.

1222.101–71 Contract clauses.

(a) When applicable, the contracting officer may insert the clause at (TAR) 48 CFR 1252.222–70, Strikes or Picketing Affecting Timely Completion of the Contract Work, in solicitations and contracts.

(b) When applicable the contracting officer may insert the clause at (TAR) 48 CFR 1252.222–71, Strikes or Picketing Affecting Access to a DOT Facility, in solicitations and contracts.

Subpart 1222.4—Labor Standards for Contracts Involving Construction

1222.406 Administration and enforcement.

1222.406–9 Withholding from or suspension of contract payments.

(c) *Disposition of contract payments withheld or suspended*—(1) *Forwarding wage underpayments to the Secretary of the Treasury.* The contracting officer shall ensure that a completed Form DOT F 4220.7, Employee Claim for Wage Restitution, is obtained from each employee claiming restitution under the

contract. The Comptroller General (Claims Division) must receive this form with a completed Standard Form (SF) 1093, Schedule of Withholding Under the Davis-Bacon Act or the Contract Work Hours and Safety Standards Act, before payment can be made to the employee.

PART 1223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 1223.3—Hazardous Material Identification and Material Safety Data

Sec.
1223.303 Contract clause.

Subpart 1223.70—Safety Requirements for Selected DOT Contracts

1223.7000 Contract clauses.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1223.3—Hazardous Material Identification and Material Safety Data

1223.303 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.223–70, Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits, in solicitations and contracts involving the removal or disposal of hazardous waste material.

Subpart 1223.70—Safety Requirements for Selected DOT Contracts

1223.7000 Contract clauses.

(a) Where all or part of a contract will be performed on Government-owned or leased property, the contracting officer shall insert the clause at (TAR) 48 CFR 1252.223–71, Accident and Fire Reporting.

(b) For all solicitations and contracts under which human test subjects will be utilized, the contracting officer shall insert the clause at (TAR) 48 CFR 1252.223–72, Protection of Human Subjects. Upon written request, copies of the applicable National Highway Traffic Safety Administration (NHTSA) policies and procedures may be obtained from NHTSA's Associate Administrator for Administration (NPO–200), 400 7th Street, SW., Washington DC 20590.

(c) Pursuant to Executive Order 13043, Increasing Seat Belt Use in the United States, the contracting officer shall insert the clause at (TAR) 48 CFR 1252.223–73, Seat Belt Use Policies and Programs in all solicitations and contracts, exceeding the simplified acquisition threshold.

PART 1224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1224.1—Protection of Individual Privacy

Sec.
1224.102–70 General.
1224.103 Procedures.

Subpart 1224.2—Freedom of Information Act

1224.203 Policy.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1224.1—Protection of Individual Privacy

1224.102–70 General.

(a) Systems of records to which the Privacy Act applies shall not be released except by the Government regardless of whether the Government or a contractor acting on behalf of the Government is maintaining the records. Examples of systems of records are:

(1) Personnel, payroll and background records personal to any officer or employee of DOT, or other person, including his or her residential address;

(2) Medical histories and medical records concerning individuals, including applications for licenses; and

(3) Any other detailed record containing information identifiable with a particular person.

(b) Examples of systems of records to which the Privacy Act does not apply are:

(1) Records that are maintained by a contractor on individuals employed by the contractor in the process of providing goods and services to the Federal government; and

(2) Records generated on contract students pursuant to their attendance (e.g., admission forms, grade reports) when contracting with an educational institution. These records must be similar to those maintained on other students, must not reveal their identities, and must not be commingled with records of other students.

1224.103 Procedures.

DOT rules and regulations implementing the Privacy Act of 1974 are located at 49 CFR part 10.

Subpart 1224.2—Freedom of Information Act

1224.203 Policy.

DOT rules and regulations implementing the Freedom of Information Act (FOIA) and the names and addresses of the OA FOIA offices are located in 49 CFR part 7. Specific contract award information shall be requested from the FOIA office of the OA making the contract award.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1227—PATENTS, DATA, AND COPYRIGHTS

Subpart 1227.3—Patent Rights Under Government Contracts

Sec.
1227.304 Procedures.
1227.304–5 Appeals.
1227.305 Administration of patent rights clauses.
1227.305–4 Conveyance of invention rights acquired by the Government.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1227.3—Patent Rights Under Government Contracts

1227.304 Procedures.

1227.304–5 Appeals.

(b) Agency actions listed at (FAR) 48 CFR 27.304–5(a)(1) and (a)(3) through (a)(5) may be appealed to the Head of the Contracting Activity (HCA). Actions under this section shall be coordinated with the legal counsel of the responsible office.

(1) Actions must be appealed within 30 days of receipt of the written statement required by (FAR) 48 CFR 27.304–5(a). The contractor must present all pertinent arguments in the appeal along with documentary evidence, if any.

(2) The HCA shall issue a determination within 45 days from the date the contractor's appeal is received.

(c) Appeals of decisions rendered under (FAR) 48 CFR 27.304–5(a)(2) are subject to the following requirements:

(1) Actions must be appealed within 30 days of receipt of the written statement required by (FAR) 48 CFR 27.304–5(a). The contractor must present all pertinent arguments in the appeal along with documentary evidence, if any.

(2) The HCA may hold an informal hearing if deemed appropriate or at the request of the contractor. The informal hearing shall be held after all fact-finding is completed.

(i) If a hearing is held, there shall be a transcribed record of the same. A copy of the transcript shall be available to the contractor at cost.

(ii) Transcription of the hearing may be waived by mutual agreement of the parties.

(3) The HCA shall designate an impartial fact-finding official. The official conducting the fact-finding shall prepare findings of fact and transmit them to the HCA promptly after the conclusion of the fact-finding proceeding along with a recommended determination.

(i) A copy of the findings of fact shall be sent to the contractor (assignee or exclusive licensee) by registered or certified mail. The contractor (assignee or exclusive licensee) and agency representatives will be given 30 days to submit written arguments to the HCA; and, upon request by the contractor oral arguments will be held before the HCA as part of an informal hearing. The HCA will make the final determination as to whether the initial agency action was appropriate under the relevant laws and procedures (*See* 1227.304–5(c)(4)).

(ii) Any portion of the informal hearing that involves testimony or evidence shall be closed to the public. Agencies shall not disclose any such information obtained in the course of the appeal to persons outside the government except when such release is authorized by the contractor (assignee or licensee).

(4) The HCA's final determination shall be based on the findings of facts, together with any other information and written or oral arguments submitted by the contractor (assignee or exclusive licensee) and agency representatives, and any other information in the administrative record. The HCA may reject only those facts that have been found clearly erroneous and must explicitly state the rejection and the basis for the contrary finding. The HCA shall provide the contractor (assignee or exclusive licensee) a written determination by certified or registered mail no later than 90 days after fact-finding is completed or no later

than 90 days after oral arguments, whichever is later.

1227.305 Administration of patent rights clauses.

1227.305–4 Conveyance of invention rights acquired by the Government.

Solicitations and contracts that include a patent rights clause must provide the contractor the means to report inventions made in the course of contract performance and at contract completion. This requirement may be fulfilled by requiring the contractor to submit a DD Form 882, Report of Inventions and Subcontracts.

PART 1228—BONDS AND INSURANCE

Subpart 1228.1—Bonds and Other Financial Protections

Sec.
1228.106 Administration.
1228.106–1 Bonds and bond-related forms.
1228.106–6 Furnishing of information.
1228.106–70 Execution and administration of bonds.
1228.106–71 Performance and payment bonds for certain contracts.
1228.106–7100 Waiver.
1228.106–7101 Exception.
1228.106–470 Contract clause.

Subpart 1228.3—Insurance

1228.306 Insurance under fixed-price contracts.
1228.306–70 Contracts for lease of aircraft.
1228.307–1 Group insurance plans.
1228.311–1 Contract clause.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1228.1—Bonds and Other Financial Protections

1228.106 Administration.

1228.106–1 Bonds and bond-related forms.

(b) Standard Form (SF) 25, Performance Bond, prescribed at (FAR) 48 CFR 28.106–1(b), shall provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor. Forms other than the SF 25 (e.g., a commercial form) shall not be used by contractors when a performance bond is required.

1228.106–6 Furnishing of information.

(b) When furnishing surety information, the inquirer should also be informed that:

(1) Persons believing that they have legal remedies under the Miller Act (40 U.S.C. 3131–3134) are cautioned to consult their own legal advisor regarding the proper steps to take to obtain remedies.

(2) On construction contracts exceeding $2,000, if the contracting officer is informed (through routine compliance checking, a complaint, or a request for information) that a laborer, mechanic, apprentice, trainee, watchman, or guard employed by the contractor or subcontractor at any tier may have been paid wages less than those required by the applicable labor standards provisions of the contract, the contracting officer shall promptly initiate an investigation in accordance with (FAR) 48 CFR subpart 22.4, irrespective of the employee's rights under the Miller Act. When an employee's request for information is involved, the contracting officer shall inform the inquirer that such investigation will be made. To insure proper payment to such employees, this investigation is required pursuant to the provisions of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (40 U.S.C. 3141), and Copeland (Anti-Kickback) Act (41 U.S.C. 51–58).

(c) When furnishing a copy of a payment bond and contract in accordance with (FAR) 48 CFR 28.106–6(b), the requirement for a copy of the contract may be satisfied by furnishing a machine-duplicate copy of the contractor's first pages which show the contract number and date, the contractor's name and signature, the contracting officer's signature, and the description of the contract work. The contracting officer furnishing the copies shall place the statement ''Certified to be a true and correct copy'' followed by his/her signature, title and name of the OA. The fee for furnishing the requested certified copies shall be determined in accordance with the DOT

Freedom of Information Act regulation, 49 CFR part 7, (TAR) 48 CFR 1224.203).

1228.106–70 Execution and administration of bonds.

(a) The contracting officer shall notify the surety within 30 days, of the contractor's failure to perform in accordance with the terms of the contract.

(b) When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm, and the phrase ''a partnership composed of.'' If a principal is a corporation, the state of incorporation must also appear on the bond.

(c) Performance or payment bond(s), other than an annual bond, shall not predate the contract to which it pertains.

(d) Bonds may be filed with the original contract to which they apply, or all bonds can be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross-reference the applicable bonds.

1228.106–71 Performance and payment bonds for certain contracts.

1228.106–7100 Waiver.

(a) Pursuant to the authority vested in the Secretary of Transportation by the Miller Act, the requirements of 40 U.S.C. 3131 et seq. are waived, to the extent authorized in 40 U.S.C. 3134(b), with respect to contracts for the construction, alteration, or repair of vessels when the contract is made under sections 1535 and 1536 of Title 31, the Merchant Marine Act 1936 (46 App. U.S.C. 1101 et seq.), or the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1735 et seq.), regardless of the terms of the contracts as to payment or title.

(b) The Miller Act's requirement that certain contracts have payment bonds in place in order to protect the public, including the Government, material, men and laborers is not generally necessary with respect to the classes of contracts described under (TAR) 48 CFR 1228.106–7100(a). Inasmuch as the Government would directly or indirectly bear the burden of premiums for performance and payment bonds obtained in connection with such contracts, a substantial savings can be made by waiving the requirement that they be obtained. However, unusual circumstances may arise in which either payment or performance bonds, or both, will be advantageous in connection with certain such contracts.

1228.106–7101 Exception.

A performance and payment bond for the contracts described under (TAR) 48 CFR 1228.106–7100(a) may be advantageous in view of unusual circumstances arising in connection with such contracts. Requests for the authority to include the requirement for either a performance or payment bond, or both in the contracts described under (TAR) 48 CFR 1228.106–7100(a) shall be submitted by the contracting officer to the HCA, before a solicitation is issued.

1228.106–470 Contract clause.

The contracting officer must insert the clause at (TAR) 48 CFR 1252.228–73, Notification of Miller Act Payment Bond Protection, in solicitations and contracts when payment bonds are required.

Subpart 1228.3—Insurance

1228.306 Insurance under fixed-price contracts.

1228.306–70 Contracts for lease of aircraft.

(a) The contracting officer shall insert the clauses at (TAR) 48 CFR 1252.228–70 through 1252.228–72, unless otherwise indicated by the specific instructions for their use, in any contract for the lease of aircraft (including aircraft used in out-service flight training).

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.228–70, Loss of or Damage to Leased Aircraft, in any contract for the lease of aircraft, except in the following circumstances:

(1) When the hourly rental rate does not exceed $250 and the total rental cost for any single transaction is not in excess of $2,500:

(2) When the cost of hull insurance does not exceed 10 percent of the contract rate; or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(c) The contracting officer must insert the clause at (TAR) 48 CFR 1252.228–71, Fair Market Value of Aircraft, when fair market value of the aircraft can be determined.

(d) 49 U.S.C. provides that an aircraft lessor under a lease of 30 days or more is not liable for injury or death of persons, or damage or loss of property unless the aircraft is in the actual possession or control of the lessor and the damage occurs because of the aircraft engine, propeller or the flight of, or an object falling from the aircraft, engine or propeller.

[70 FR 6507, Feb. 7, 2005, as amended at 70 FR 76418, Dec. 27, 2005]

1228.307–1 Group insurance plans.

(a) *Prior approval requirements*. The contracting officer shall instruct the contractor on a contract-by-contract basis on proposed purchases of group insurance plans. Legal advice should be sought where necessary on the advantages to the Government.

1228.311–1 Contract clause.

The contracting officer shall insert the clause at (FAR) 48 CFR 52.228–7, Insurance Liability to Third Persons, as prescribed in FAR 28.311–1 unless it is waived by an official one level above the contracting officer.

PART 1231—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1231.2—Contracts With Commercial Organizations

Sec.
1231.205 Selected costs.
1231.205–32 Precontract costs.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1231.2—Contracts With Commercial Organizations

1231.205 Selected costs.

1231.205–32 Precontract costs.

(a) The decision to incur precontract costs is that of the contractor. No DOT employee can authorize, demand, or require a contractor to incur precontract costs. The contracting officer may advise the prospective contractor that any costs incurred before contract award are at the contractor's sole risk and that if negotiations fail to result in a binding contract, payment of these costs may not be made by the Government.

(b) When the contracting officer determines that incurring precontract costs was necessary to meet the proposed contract delivery schedule of a cost-reimbursement contract, the clause at (TAR) 48 CFR 1252.231–70, Date of Incurrence of Costs, may be inserted in the resultant contract.

PART 1232—CONTRACT FINANCING

Subpart 1232.70—Contract Payments

Sec.
1232.7002 Invoice and voucher review and approval.
APPENDIX A TO PART 1232—INSTRUCTIONS FOR COMPLETING THE SF 1034
APPENDIX B TO PART 1232—INSTRUCTIONS FOR COMPLETING THE SF 1035

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1232.70—Contract Payments

1232.7002 Invoice and voucher review and approval.

(a) Under fixed-price contracts, the contracting officer shall require the contractor to submit an invoice or voucher in order to receive payment under the contract. The invoice or voucher may be on a form or company letterhead as long as it meets the requirements of the Management and Budget (OMB) regulation at 5 CFR part

1315 as implemented by (FAR) 48 CFR Subpart 32.9, and the contract.

(b) Under other than fixed-price contracts, the contracting office shall require the contractor to submit the SF 1034, Public Voucher for Purchases and Services Other Than Personal, and the SF 1035, Public Voucher for Purchases and Services Other Than Personal (Continuation Sheet), to request payments. The forms must be completed as required by appendix A to this part, Instructions for Completing the SF 1034, and appendix B to this part, Instructions for Completing the SF 1035.

APPENDIX A TO PART 1232—INSTRUCTIONS FOR COMPLETING THE SF 1034

[The SF 1034, Public Voucher for Purchases and Services Other Than Personal, shall be completed in accordance with the below instructions. The numbered items correspond to the entries on the form.]

Caption on the SF 1034	Data to be inserted in the block
1. U.S. Department, Bureau, or establishment and location.	Name and address of the contracting office which issued the contract.
2. Date voucher prepared	Date voucher submitted to the designated billing office cited under the contract or order.
3. Contract No. and date	Contract No. and, when applicable, the Order No. and date as shown on the award document.
4. Requisition No. and date	Leave blank or fill-in in accordance with the instructions in the contract.
5. Voucher No.	Start with "1" and number consecutively. A separate series of consecutive numbers must be used beginning with "1" for each contract number or order number (when applicable). Note: Insert the word "FINAL" if this is the last voucher.
6. Schedule No.; paid by; date invoice received; discount terms; payee's account No.; shipped from/to; weight; government B/L.	Leave all these blocks blank.
7. Payee's name and address	Name and address of contractor as it appears on the contract. If the contract is assigned to a bank, also show "CONTRACT ASSIGNED" below the name and address of the contractor.
8. Number and date or order	Leave blank. (See #3 above.)
9. Date of delivery or service	The period for which the incurred costs are being claimed (e.g., month and year; beginning and ending date of services, etc.).
10. Articles or services	Insert the following: "For detail, see the total amount of the claim transferred from the attached SF 1035, page X of X." One space below this line, insert the following: "COST REIMBURSABLE-PROVISIONAL PAYMENT."
11. Quantity; unit price; (cost; per)	Leave blank.
12. Amount	Insert the total amount claimed from the last page of the SF 1035.
Payee must NOT use the space below	Do NOT write or type below this line.

APPENDIX B TO PART 1232—INSTRUCTIONS FOR COMPLETING THE SF 1035

The SF 1035, Public Voucher for Purchases and Services Other Than Personal (Continuation Sheet), shall be completed in accordance with the below instructions.

1. Use the same basic instructions for the SF 1035 as used for the SF 1034. Ensure that the contract and, if applicable, order number, are shown on each continuation sheet. Use as many sheets as necessary to show the information required by the contract, contracting officer, or responsible audit agency; however, if more than one sheet of SF 1035 is used, each sheet shall be in numerical sequence.

2. The following items are generally entered below the line with Number and Date of Order; Date of Delivery or Service; Articles or Services; Quantity; Unit Price; and Amount (but do not necessarily tie to these captions).

3. Description of data to be inserted as it applies to the contract or order number.

a. Show, as applicable, the target or estimated costs, target or fixed-fee, and total contract value, as adjusted by any modifications to the contract or order. The FAR permits the contracting officer to withhold a percentage of fixed fee until a reserve is set aside in an amount that is considered necessary to protect the Government's interest.

b. Show the following costs and supporting data (as applicable) to the contract or order:

(1) *Direct Labor*. List each labor category, rate per labor hour, hours worked, and extended total labor dollars per labor category.

(2) *Premium Pay/Overtime*. List each labor category, rate per labor hour, hours worked, and the extended total labor dollars per labor category. Note: Advance written authorization must be received from the contracting officer to work overtime or to pay premium rates; therefore, identify the contracting officer's written authorization to the contractor.

(3) *Fringe Benefits.* If fringe benefits are included in the overhead pool, no entry is required. If the contract allows for a separate fringe benefit pool, cite the formula (rate and base) in effect during the time the costs were incurred. If the contract allows for billing fringe benefits as a direct expense, show the actual fringe benefit costs.

(4) *Materials, Supplies, Equipment.* Show those items normally treated as direct costs. Expendable items need not be itemized and may be grouped into major classifications such as office supplies. However, items valued at $5,000 or more must be itemized. See (FAR) 48 CFR part 45, Government Property, for reporting of property.

(5) *Travel.* List the name and title of traveler, place of travel, and travel dates. If the travel claim is based on the actual costs expended, show the amount for the mode of travel (i.e., airline, private auto, taxi, etc.), lodging, meals, and other incidental expenses separately, on a daily basis. These actual costs must be supported with receipts to substantiate the costs paid. Travel costs for consultants must be shown separately and also supported.

(6) *Other Direct Costs.* Itemize those costs that cannot be placed in categories (1) through (5) above. Categorize these costs to the extent possible.

(7) *Total Direct Costs.* Cite the sum of categories (1) through (6) above.

(8) *Overhead.* Cite the rate, base, and extended amount.

(9) *G&A Expense.* Cite the rate, base, and extended amount.

(10) *Total Costs.* Cite the sum of categories (7) through (9) above.

(11) *Fee.* Cite the rate, base, and extended amount.

(12) *Total Cost and Fee Claimed.* Enter this amount on the SF 1034.

COMPLETION VOUCHER

The completion (final) voucher is the last voucher to be submitted for incurred, allocable, and allowable costs expended to perform the contract or order. This voucher should include all contract reserves, allowable cost withholdings, balance of fixed fee, etc. However, the amount of the completion voucher when added to the total amount previously paid cannot exceed the total amount of the contract.

PART 1233—PROTESTS, DISPUTES, AND APPEALS

Subpart 1233.1 Protests

Sec.
1233.103 Protests to the agency.
1233.104 Protests to GAO.

Subpart 1233.2—Disputes and Appeals

1233.211 Contracting officer's decision.
1233.214 Alternative dispute resolution (ADR).

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1233.1—Protests

1233.103 Protests to the agency.

(c) DOT Operating Administrations (OAs) shall consider the use of Alternate Dispute Resolution (ADR) in all agency protest actions.

1233.104 Protests to GAO.

The protest process at the Government Accountability Office (GAO) may include ADR assistance by GAO. The contracting officer shall, with advice of counsel, explore the possibility of using ADR for all GAO protests.

Subpart 1233.2—Disputes and Appeals

1233.211 Contracting officer's decision.

For DOT contracts, the Board of Contract Appeals (BCA) referenced at (FAR) 48 CFR 33.211 is the Department of Transportation Board of Contract Appeals (S–20), 400 7th Street, SW., Washington, DC 20590. The DOTBCA Rules of Procedure are contained in 48 CFR chapter 63, part 6301.

1233.214 Alternative dispute resolution (ADR).

(c) The Administrative Dispute Resolution Act (ADRA) of 1990, Public Law 101–552, as reauthorized by the Administrative Dispute Resolution Act (ADRA) of 1996, Public Law 104–320, authorizes and encourages agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, either before or after appeal, and for other purposes. ADR procedures may be used when:

(1) There is mutual consent by the parties to participate in the ADR process (with consent being obtained either before or after an issue in controversy has arisen);

(2) Prior to the submission of a claim; and

(3) In resolution of a formal claim. Use of ADR shall be coordinated with counsel. For all matters filed with the DOTBCA, the DOTBCA Alternate Dispute Resolution (ADR) procedures contained in 48 CFR Chapter 63, Section 6302.30, ADR Methods (Rule 30), will be distributed to the parties, if ADR procedures are used.

(d) Pursuant to the ADRA, DOT has appointed a Dispute Resolution Specialist, who is responsible for the operations of the Center for Alternative Dispute Resolution, (C–4). The Center may provide an internal DOT neutral agreeable to the parties to conduct any of the alternative means of dispute resolution set forth in the ADRA, 5 U.S.C. 571(3) on a non-reimbursable basis for DOT operating administrations and their contracting partners. Alternative means of dispute resolution include settlement negotiations, conciliation, facilitation, mediation, fact finding, mini-trials, and arbitration, or any combination of these methods. The Center may also arrange for an external public or private neutral at the parties' expense.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

1234 [RESERVED]

PART 1235—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
1235.003 Policy.

Subpart 1235.70—Research Misconduct

1235.7000 Contract clause.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

1235.003 Policy.

(b) Cost sharing. DOT cost sharing policies shall be in accordance with (FAR) 48 CFR 16.303, (FAR) 48 CFR 42.707(a), and Operating Administration (OA) procedures.

Subpart 1235.70—Research Misconduct

1235.7000 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.235–70, Research Misconduct, in all solicitations and contracts for research and development. For further information, see DOT's Implementation Guidance for Executive Office of the President, Office of Science and Technology Policy, ''Federal Policy on Research Misconduct,'' dated February 2002.

PART 1236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1236.5—Contract Clauses

Sec.
1236.570 Special precautions for work at operating airports.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1236.5—Contract Clauses

1236.570 Special precautions for work at operating airports.

Where any acquisition will require work at an operating airport, insert the clause at (TAR) 48 CFR 1252.236–70, Special Precautions for Work at Operating Airports, in solicitations and contracts.

[70 FR 6507, Feb. 7, 2005]

PART 1237—SERVICE CONTRACTING

Subpart 1237.1—Service Contracts—General

Sec.
1237.110 Solicitation provisions and contract clauses.

Subpart 1237.70—Department of Transportation Procedures for Acquiring Training Services

1237.7000 Policy.
1237.7001 Certification of data.
1237.7002 Applicability.
1237.7003 Solicitation provisions and contract clause.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1237.1—Service Contracts—General

1237.110 Solicitation provisions and contract clauses.

(a) Contracting officers shall insert the clause at (TAR) 48 CFR 1252.237–70, Qualifications of Contractor Employees, in all solicitations and contracts for supplies and/or services where contractor employees will have access to Government facilities, sensitive information, including proprietary data and/or resources.

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.237–73, Key Personnel, in solicitations and contracts for services when the selection for award is substantially based on the offeror's possession of special capabilities regarding personnel.

Subpart 1237.70—Department of Transportation Procedures for Acquiring Training Services

1237.7000 Policy.

When training services are provided under contract, DOT policy requires that all prospective contractors:

(a) Certify that the data provided concerning company qualifications, background statements, etc., is current, accurate, and complete; and

(b) Agree to not solicit or advertise private, non-Government training while conducting a training course.

1237.7001 Certification of data.

Towards fulfilling DOT's policy at (TAR) 48 CFR 1237.7000(a), contracting officers shall request information from prospective contractors for certification purposes. The type of information requested is dependent upon the criticality of the service and/or any unique or essential qualification requirements.

1237.7002 Applicability.

The policy at (TAR) 48 CFR 1237.7000 applies to all contracts (as defined in FAR 2.101) awarded by DOT for training services when DOT controls the content and/or presentation of the course. This policy does not apply to courses attended by DOT employees that are offered and sponsored by Government sources of supply, educational institutions, or private entities where DOT does not control the course content or presentation. (See (TAR) 48 CFR 1213.7100 for examples.)

1237.7003 Solicitation provisions and contact clause.

(a) The contracting officer shall insert the provision at (TAR) 48 CFR 1252.237–71, Certification of Data, in solicitations and the clause at (TAR) 48 CFR 1252.237–72, Prohibition on Advertising, in solicitations and contracts for training services when the content and/or presentation of the course is controlled by DOT.

(b) Contracting officers shall incorporate the successful offeror's certified data into any resultant contract(s). Certified data may be adopted by reference, if the contracting officer determines it contains sufficient descriptive information (i.e., dated material such as resumes, company and/or personnel qualifications) to reliably describe the certified data submitted.

PART 1239—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 1239.1—General

Sec.
1239.70 Solicitation provision and contract clause.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1239.1—General

1239.70 Solicitation provision and contract clause.

The contracting officer shall insert the provision at (TAR) 48 CFR 1252.239–71, Information Technology Security Plan and Accreditation, and the clause at (TAR) 48 CFR 1252.239–70, Security Requirements for Unclassified Information Technology Resources, in all solicitations and contracts, exceeding the micro-purchase threshold, that include information technology services.

[70 FR 6507, Feb. 7, 2005]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 1242.70—Contract Administration Clauses

Sec.
1242.7000 Contract clauses.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1242.70—Contract Administration Clauses

1242.7000 Contract clauses.

(a) The contracting officer may use the clause at (TAR) 48 CFR 1252.242–70, Dissemination of Information—Educational Institutions, in lieu of the clause at (TAR) 48 CFR 1252.242–72, Dissemination of Contract Information, in DOT research contracts with educational institutions that require the release or coordination of information.

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.242–71, Contractor Testimony, in all solicitations and contracts issued by National Highway Traffic Safety Administration (NHTSA). Other Operating Administrations (OAs) may use the clause as deemed appropriate.

(c) The contracting officer may insert the clause at (TAR) 48 CFR 1252.242–72, Dissemination of Contract Information, in all DOT contracts, except contracts that require the release or coordination of information.

(d) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.242–73, Contracting Officer's Technical Representative, in solicitations and contracts when it is intended that a representative will be assigned to the contract to perform functions of a technical nature.

[70 FR 6507, Feb. 7, 2005]

PART 1245—GOVERNMENT PROPERTY

Subpart 1245.5—Management of Government Property in the Possession of Contractors

Sec.
1245.505 Records and reports of Government property.
1245.505–14 Reports of Government property.
1245.505–70 Contract clauses.
1245.508–2 Reporting results of inventories.
1245.511 Audit of property control system.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1245.5—Management of Government Property in the Possession of Contractors

1245.505 Records and reports of Government Property.

1245.505–14 Reports of Government property.

When Government property is furnished to or acquired by the contractor to perform the contract, the contract shall require the contractor to submit annual reports (see (FAR) 48 CFR 45.505–14) to the contracting officer not later than September 15 of each year. The contractor's report shall be submitted on Form DOT F 4220.43, Contractor Report of Government Property.

1245.505–70 Contract clauses.

Contracting officers shall insert the clause at (TAR) 48 CFR 1252.245–70 in solicitations and contracts when the contract will require Government provided or contractor acquired property.

1245.508–2 Reporting results of inventories.

The inventory report shall also include the following:

(a) Name and title of the individual(s) that performed the physical inventory;

(b) An itemized, categorized listing of all property capitalized:

(1) Land and rights therein;

(2) Other real property;

(3) Plant equipment;

(4) Special test equipment; agency peculiar property; and

(5) Special tooling; and

(c) An itemized listing of the property lost, damaged, destroyed, or stolen, the circumstances surrounding each incident, and the resolution of the incident.

1245.511 Audit of property control system.

(a) The property administrator (or other Government official authorized by the contracting officer) shall audit the contractor's property control system whenever there are indications that the contractor's property control system may be deficient. Examples of deficiencies are:

(1) Failure of the contractor to acknowledge receipt of Government-furnished property;

(2) Failure of the contractor to submit the annual property reports required by (TAR) 48 CFR 1245.505–14;

(3) Failure of the contractor to reconcile its physical inventory with its property control record; or

(4) Failure of the contractor to submit a Government property listing when requested by the property administrator.

(b) When it is determined that the contractor's property control system is deficient, the property administrator, in coordination with the contracting officer, shall discuss the deficiencies with the contractor. If the contractor does not take action to correct the deficiencies, the contracting officer shall provide the contractor with a written notice of the deficiencies and the date all deficiencies must be corrected.

PART 1246—QUALITY ASSURANCE

Subpart 1246.1—General

Sec.
1246.101 Definitions.
1246.101–70 Additional definitions.

Subpart 1246.7—Warranties

1246.705 Limitations.
1246.706 Warranty terms and conditions.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1246.1—General

1246.101 Definitions.

1246.101–70 Additional definitions.

At no additional cost to the Government means at no increase in price for firm-fixed-price contracts, at no increase in target or ceiling price for fixed price incentive contracts (see (FAR) 48 CFR 46.707), or at no increase in estimated cost or fee for cost-reimbursement contracts.

Defect means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

Major acquisition means an acquisition or project as defined by TAM Chapter 1234, Major System Acquisition.

Performance requirements means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

Subpart 1246.7—Warranties

1246.705 Limitations.

(a) The following restrictions are applicable to DOT contracts:

(1) The contractor shall not be required to honor the warranty on any property furnished by the Government except for:

(i) Defects in installation; and

(ii) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property.

(2) Any warranty obtained shall specifically exclude coverage of damage in time of war (combat damage) or national emergency.

(3) Contracting officers shall not include in a warranty clause any terms that require the contractor to incur liability for loss, damage, or injury to third parties.

(b) [Reserved]

1246.706 Warranty terms and conditions.

(a) When appropriate and cost effective, the contracting officer shall comply with the following requirements when developing the warranty terms and conditions:

(1) Identify the affected line item(s) and the applicable specification(s);

(2) Require that the line item's design and manufacture will conform to:

(i) An identified revision of a top-level drawing; and/or

(ii) An identified specification or revision thereof;

(3) Require that the line item conform to the specified Government performance requirements;

(4) Require that all line items and components delivered under the contract will be free from defects in materials and workmanship;

(5) State that if the contractor fails to comply with specification or there are defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;

(6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible;

(7) Identify the specific paragraphs containing Government performance requirements that the contractor must meet;

(8) Ensure that any performance requirements identified as goals or objectives beyond specification requirements are excluded from the warranty provision;

(9) Specify what constitutes the start of the warranty period (e.g., delivery, acceptance, in-service date), the ending of the warranty (e.g., passing a test or demonstration, or operation without failure for a specified time period), and circumstances requiring an extension of warranty duration (e.g., extending the warranty period as a result of mass defect correction during warranty period);

(10) Identify what transportation costs will be paid by the contractor in relation to the warranty coverage;

(11) In addition to combat damage, identify any conditions which will not be covered by the warranty, and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) In addition to the terms and conditions listed in paragraph (a) of this section, the contracting officer shall consider the following when a warranty clause is being used for a major acquisition:

(1) For line items or components which are commercially available, obtaining a warranty as is normally provided by the manufacturer or supplier, in accordance with (FAR) 48 CFR 46.703(d) and (FAR) 48 CFR 46.710(b)(2).

(2) Obtaining a warranty of compliance with the stated requirements for line items or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract.

(3) The warranty provided under paragraph (b)(2) of this section shall provide that in the event the line items or any components thereof fails to meet the terms of the warranty provided, the contracting officer may:

(i) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the Government, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract;

(ii) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action; or

(iii) Equitably reduce the contract price.

(4) Inserting remedies, exclusions, limitations and durations, provided these are consistent with the specific requirements of this subpart and (FAR) 48 CFR 46.706.

(5) Excluding from the terms of the warranty certain defects for specified supplies (exclusions) and limiting the contractor's liability under the terms

of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties.

(6) Structuring of a broader and more comprehensive warranty where such is advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (e.g., where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system).

(c) Any contract that contains a warranty clause must contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor is reimbursed at established rates for fault isolation work, and that the Government receive credit for any payments where equipment failure is covered by warranty provisions.

PART 1247—TRANSPORTATION

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1247.5—Ocean Transportation by U.S.-Flag Vessels

1247.506 Procedures.

(a) The Maritime Administration (MARAD) is the enforcing agency of the cargo preference statutes. MARAD can assist contractors in locating U.S.-flag carriers and determine when such services are not available and they can assist contracting officers in evaluating costs, services, and other matters regarding ocean transportation.

(d) If no transportation officer is available, the contracting officer shall submit a copy of the rated ''on board'' bill of lading, for each shipment, no later than 20 days after the vessel's loading date for exports and 30 days for imports as stated in 46 CFR 381.3. All non-vessel ocean common carrier bills of lading should be accompanied by the underlying carrier's ocean bill of lading. The documents shall be sent to the Maritime Administration, Office of Cargo Preference, MAR–590, 400 Seventh Street, SW., Washington, DC 20590. The bill of lading shall contain the following information:

(1) Name of sponsoring Government agency or department;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Commodity description;

(8) Gross weight in kilos;

(9) Total ocean freight revenue in U.S. dollars.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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1252.242–72 Dissemination of contract information.
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1252.245–70 Government property reports.

APPENDIX TO PART 1252—TAR MATRIX

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1252.1—Instructions for Using Provisions and Clauses

1252.101 Using Part 1252.

(b) *Numbering*—(2)(i) *Provisions or clauses that supplement the FAR.* (A) Agency-prescribed provisions and clauses permitted by TAR and used on a standard basis (i.e., normally used in two or more solicitations or contracts regardless of contract type) shall be prescribed and contained in the TAR. Operating Administrations (OAs) desiring to use a provision or a clause on a standard basis shall submit a request containing a copy of the clause(s), justification for its use, and evidence of legal counsel review to the Office of the Senior Procurement Executive in accordance with (TAR) 48 CFR 1201.304 for possible inclusion in the TAR.

(B) Provisions and clauses used on a one-time basis (i.e., non-standard provisions and clauses) may be approved by the contracting officer, unless a higher level is designated by the OA. This authority is permitted subject to:

(*1*) Evidence of legal counsel review in the contract file;

(*2*) Inserting these clauses in the appropriate sections of the uniform contract format; and

(*3*) Ensuring the provisions and clauses do not deviate from the requirements of the FAR and TAR.

Subpart 1252.2—Text of Provisions and Clauses

1252.211–70 Index for specifications.

As prescribed in (TAR) 48 CFR 1211.204–70, insert the following clause:

INDEX FOR SPECIFICATIONS (APR 2005)

If an index or table of contents is furnished in connection with specifications, such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not a part of the specification. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

(End of clause)

1252.216–70 Evaluation of offers subject to an economic price adjustment clause.

As prescribed in (TAR) 48 CFR 1216.203–470, insert the following provision:

EVALUATION OF OFFERS SUBJECT TO AN ECONOMIC PRICE ADJUSTMENT CLAUSE (OCT 1994)

Offers shall be evaluated without an amount for an economic price adjustment being added. Offers will be rejected which: (1) Increase the ceiling stipulated; (2) limit the downward adjustment; or (3) delete the economic price adjustment clause. If the offer stipulates a ceiling lower than that included in the solicitation, the lower ceiling will be incorporated into any resulting contract.

(End of provision)

1252.216–71 Determination of award fee.

As prescribed in (TAR) 48 CFR 1216.406, insert the following clause:

DETERMINATION OF AWARD FEE (APR 2005)

(a) The Government shall evaluate contractor performance at the end of each specified evaluation period to determine the amount of award. The contractor agrees that the amount of award and the award fee methodology are unilateral decisions to be made at the sole discretion of the Government.

(b) Contractor performance shall be evaluated according to a Performance Evaluation Plan. The contractor shall be periodically informed of the quality of its performance and areas in which improvements are expected.

(c) The contractor shall be promptly advised, in writing, of the determination and reasons why the award fee was or was not earned. The contractor may submit a performance self-evaluation for each evaluation period. The amount of award is at the sole discretion of the Government but any self-evaluation received within _____ (*insert number*) days after the end of the current evaluation period will be given such consideration, as may be deemed appropriate by the Government.

(d) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at (*identify location of award fee amounts*). Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(End of clause)

1252.216–72 Performance evaluation plan.

As prescribed in (TAR) 48 CFR 1216.406(b), insert the following clause:

PERFORMANCE EVALUATION PLAN (OCT 1994)

(a) A Performance Evaluation Plan shall be unilaterally established by the Government based on the criteria stated in the contract and used for the determination of award fee. This plan shall include the criteria used to evaluate each area and the percentage of award fee (if any) available for each area. A copy of the plan shall be provided to the contractor _____ (*insert number*) calendar days prior to the start of the first evaluation period.

(b) The criteria contained within the Performance Evaluation Plan may relate to: (1) Technical (including schedule) requirements, if appropriate; (2) Management; and (3) Cost.

(c) The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor _____ (*insert number*) calendar days prior to the start of the evaluation period to which the change will apply.

(End of clause)

1252.216–73 Distribution of award fee.

As prescribed in (TAR) 48 CFR 1216.406(c), insert the following clause:

DISTRIBUTION OF AWARD FEE (APR 2005)

(a) The total amount of award fee available under this contract is assigned according to the following evaluation periods and amounts:

Evaluation Period:

Available Award Fee: (*insert appropriate information*)

(b) After the contractor has been paid 85 percent of the base fee and potential award fee, the Government may withhold further

payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less. Thereafter, base fee and award fee payments may continue.

(c) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a prorata distribution associated with evaluation period activities or events as determined by the Government.

(d) The Government will promptly make payment of any award fee upon the submission by the contractor to the contracting officer's authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment may be made without using a contract modification.

(End of clause)

1252.216–74 Settlement of letter contract.

As prescribed in (TAR) 48 CFR 1216.603–4, insert the following clause:

SETTLEMENT OF LETTER CONTRACT (OCT 1994)

(a) This contract constitutes the definitive contract contemplated by issuance of letter contract _____ (*insert number*) dated _____ (*insert effective date*). It supersedes the letter contract and its modification number(s) _____ (*insert number(s)*) and, to the extent of any inconsistencies, governs.

(b) The cost(s) and fee(s), or price(s), established in this definitive contract represents full and complete settlement of letter contract (*insert number and modification number(s)* _____ (*insert number(s)*). Payment of the agreed upon fee or profit withheld pending definitization of the letter contract, may commence immediately at the rate and times stated within this contract.

(End of clause)

1252.217–70 Guarantee.

As prescribed at (TAR) 48 CFR 1217.7001(a), insert the following clause:

GUARANTEE (APR 2005)

(a) In the event any work performed or materials furnished by the contractor prove defective or deficient within 60 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 60 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the contract.

(e) The Contractor's liability shall extend for an additional 90 day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting Officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the contract price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this contract.

(End of clause)

1252.217–71 Delivery and shifting of vessel.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

DELIVERY AND SHIFTING OF VESSEL (OCT 1994)

The Government shall deliver the vessel to the Contractor at his place of business. Upon completion of the work, the Government shall accept delivery of the vessel at the Contractor's place of business. The Contractor shall provide, at no additional charge, upon 24 hours' advance notice, a tug or tugs and docking pilot, acceptable to the Contracting Officer, to assist in handling the vessel between (to and from) the Contractor's plant and the nearest point in a waterway regularly navigated by vessels of equal or greater draft and length. While the vessel is in the hands of the Contractor, any necessary towage, cartage, or other transportation between ship and shop or elsewhere, which may be incident to the work herein

specified, shall be furnished by the Contractor without additional charge to the Government.

(End of clause)

1252.217–72 Performance.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

PERFORMANCE (OCT 1994)

(a) Upon the award of the contract, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the contract has been awarded except in the case of emergency work ordered by the Contracting Officer in writing.

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

(c) The Contractor shall without charge—

(1) Make available to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities at the plant acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

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

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

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The contract will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the contract without advance approval of the Contracting Officer. Dock and sea trials not specified in the contract shall be at the Contractor's expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

1252.217–73 Inspection and manner of doing work.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

INSPECTION AND MANNER OF DOING WORK (OCT 1994)

(a) The Contractor shall perform work in accordance with the contract, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the contract, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under this contract shall be in accordance with the best commercial marine practices and the rules and requirements of all appropriate regulatory bodies including, but not limited to the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of offer, and shall be intended and approved for marine use.

(2) When Navy specifications are specified in the contract, the Contractor shall follow Navy standards of material and workmanship. The solicitation shall prescribe the Navy standard whenever applicable.

(c) The Government may inspect and test all material and workmanship at any time during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the contract, in addition to its rights under the Guarantee clause, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

(3) As specified in the contract, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall

make them available to the Government during performance of the contract and for 90 days after the completion of all work required.

(d) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder shall be as specified in the contract.

(e) The Contractor shall—

(1) Exercise reasonable care to protect the vessel from fire;

(2) Maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel's magazines, fuel oil tanks, or storerooms containing flammable materials.

(3) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in dry dock or on a marine railway;

(4) Unless otherwise provided in the contract, provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when it is in the Contractor's custody;

(5) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair.

(6) Furnish the Contracting Officer a ''gas-free'' or ''safe-for-hotwork'' certificate before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with the Government Property (Fixed-Price Contracts) clause; and

(8) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(9) Be responsible for the proper closing of all openings to the vessel's underwater structure upon which work has been performed. The contractor additionally must advise the COTR of the status of all valves closures and openings for which the contractor's workers were responsible.

(f) Except as otherwise provided in the contract, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 Fahrenheit, the Contractor shall take all necessary steps to—

(1) Keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(2) Protect the stern tube and propeller hubs from frost damage.

(g) The Contractor shall, whenever practicable—

(1) Perform the required work in a manner that will not interfere with the berthing and messing of Government personnel attached to the vessel; and

(2) Provide Government personnel attached to the vessel access to the vessel at all times.

(h) Government personnel attached to the vessel shall not interfere with the Contractor's work or workers.

(i)(1) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any contract, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the contract requires that the Contractor perform the work prior to any opportunity to inspect.

(2) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, and the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this agreement.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the contract specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area ''broom clean.''

(End of clause)

1252.217–74 Subcontracts.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

SUBCONTRACTS (OCT 1994)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of its own employees, and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors, and material men.

(c) The Contractor shall, without additional expense to the Government, employ specialty subcontractors where required by the specifications.

(d) The Government or its representatives will not undertake to settle any differences between the Contractor and its subcontractors, or between subcontractors.

(End of clause)

1252.217–75 Lay days.

As prescribed at (TAR) 48 CFR 1217.7001(c) and (e), insert the following clause:

LAY DAYS (OCT 1994)

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

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

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

(d) Payment of lay day time shall constitute complete compensation for all costs, direct and indirect, to reimburse the Contractor for use of dry dock or marine railway.

(End of clause)

[70 FR 6507, Feb. 7, 2005, as amended at 70 FR 76418, Dec. 27, 2005]

1252.217–76 Liability and insurance.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

LIABILITY AND INSURANCE (OCT 1994)

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

(b) *Loss or damage to the vessel, materials, or equipment.* (1) Unless otherwise directed or approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

(3) The Government does not assume risk of and will not pay for any costs of the following:

(i) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to—

(A) Defective workmanship performed by the Contractor or its subcontractors;

(B) Defective materials or equipment furnished by the Contractor or its subcontractors; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, whether or not the defect is latent or whether or not the nonconformance is the result of negligence.

(ii) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the Contractor or any of its representatives that have supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operation at any one plant.

(4) As to any risk that is assumed by the Government, the Government shall be subrogated to any claim, demand or cause of action against third parties that exists in favor of the Contractor. If required by the Contracting Officer, the Contractor shall execute a formal assignment or transfer of the claim, demand, or cause of action.

(5) No party other than the Contractor shall have any right to proceed directly against the Government or join the Government as a codefendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first $5,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provision of this paragraph (b).

(c) *Indemnification.* The Contractor indemnifies the Government and the vessel and its owners against all claims, demands, or causes of action to which the Government, the vessel or its owner(s) might be subject as a result of damage or injury (including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor, or its agents or employees, or any subcontractor, or its agents or employees.

(1) The Contractor's obligation to indemnify under this paragraph shall not exceed the sum of $300,000 as a consequence of any single occurrence with respect to any one vessel.

(2) The indemnity includes, without limitation, suits, actions, claims, costs, or demands of any kind, resulting from death,

personal injury, or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. For any claim, etc., made after 90 days, the rights of the parties shall be as determined by other provisions of this contract and by law. The indemnity does apply to death occurring after 90 days where the injury was received during the period covered by the indemnity.

(d) *Insurance.* (1) The Contractor shall, at its own expense, obtain and maintain the following insurance—

(i) Casualty, accident, and liability insurance, as approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause.

(ii) Workers Compensation Insurance (or its equivalent) covering the employees engaged on the work.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain and maintain the insurance required in paragraph (d)(1) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the contract price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

(4) The Contractor shall not, except at its own expense, voluntarily make any payments, assume any obligation, or incur any expense other than what would be imperative for the protection of the vessel(s) at the time of the event.

(g) In the event of loss of or damage to any vessel(s), material, or equipment which may result in a claim against the Government under the insurance provisions of this contract, the Contractor shall promptly notify the Contracting Officer of the loss or damage. The Contracting Officer may, without prejudice to any right of the Government, either—

(1) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect the replacement or repair;

(i) The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of the replacement or repair together with whatever supporting documentation the Contracting Officer may reasonably require, and shall identify the request as being submitted under the Insurance clause of this contract.

(ii) If the Government determines that the risk of the loss or damage is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable allowable cost of the replacement or repair, plus a reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) Decide that the loss or damage shall not be replaced or repaired and in that event, the Contracting Officer shall—

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this contract.

(End of clause)

1252.217–77 Title.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

TITLE (OCT 1994)

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of this contract shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the contract, or with the approval of the Contracting Officer during performance of the contract, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the

Contractor for the cost of the materials and equipments.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

(End of clause)

1252.217–78 Discharge of liens.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

DISCHARGE OF LIENS (OCT 1994)

(a) The Contractor shall immediately discharge or cause to be discharged, any lien or right in rem of any kind, other than in favor of the Government, that exists or arises in connection with work done or materials furnished under this contract.

(b) If any such lien or right *in rem* is not immediately discharged, the Government, at the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

(End of clause)

1252.217–79 Delays.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

DELAYS (OCT 1994)

When during the performance of this contract the Contractor is required to delay work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the ''Changes'' clause.

(End of clause)

1252.217–80 Department of Labor Safety and Health Regulations for Ship Repairing.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

DEPARTMENT OF LABOR SAFETY AND HEALTH REGULATIONS FOR SHIP REPAIR (APR 2005)

Nothing contained in this contract shall relieve the Contractor of any obligations it may have to comply with—

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.);

(b) The Occupational Safety and Health Standards for Shipyard Employment (29 CFR part 1915); or

(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

1252.219–71 Section 8(a) Direct Awards.

As prescribed in (TAR) 48 CFR 1219.811–3(f), insert the following clause:

SECTION 8(A) DIRECT AWARDS (APR 2005)

(a) This contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to the Partnership Agreement between the Small Business Administration (SBA) and the Department of Transportation. SBA does retain responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) contractor under the 8(a) program. The responsible SBA district office is: [To be completed by Contracting Officer at time of award]

(b) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the contracting activity shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall also coordinate with SBA prior to processing any novation agreement. The contracting activity may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) To notify the Contracting Officer, simultaneous with its notification to SBA (as required by SBA's 8 (a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

(2) To adhere to the requirements of 52.219–14, Limitations on Subcontracting.

(End of clause)

1252.219–72 Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III.

As prescribed in (TAR) 48 CFR 1219.811–3(d)(3), substitute the following paragraph for paragraph (c) of the basic FAR clause 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns.

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS—ALTERNATE III (APR 2005)

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(End of clause)

1252.222–70 Strikes or picketing affecting timely completion of the contract work.

As prescribed in (TAR) 48 CFR 1222.101–71(a), insert the following clause:

STRIKES OR PICKETING AFFECTING TIMELY COMPLETION OF THE CONTRACT WORK (OCT 1994)

Notwithstanding any other provision hereof, the Contractor is responsible for delays arising out of labor disputes, including but not limited to strikes, if such strikes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.

(End of clause)

1252.222–71 Strikes or picketing affecting access to a DOT facility.

As prescribed in (TAR) 48 CFR 1222.101–71(b), insert the following clause:

STRIKES OR PICKETING AFFECTING ACCESS TO A DOT FACILITY (OCT 1994)

If the Contracting Officer notifies the Contractor in writing that a strike or picketing: (a) Is directed at the Contractor or subcontractor or any employee of either; and (b) impedes or threatens to impede access by any person to a DOT facility where the site of the work is located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board or the use of other available judicial or administrative remedies.

(End of clause)

1252.223–70 Removal or disposal of hazardous substances—applicable licenses and permits.

As prescribed in (TAR) 48 CFR 1223.303, insert the following clause:

REMOVAL OR DISPOSAL OF HAZARDOUS SUBSTANCES—APPLICABLE LICENSES AND PERMITS (DEC 1997)

The Contractor has _____ does not have _____ all licenses and permits required by Federal, state, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess these documents, it must obtain all requisite licenses and permits within _____ days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract.

(End of clause)

1252.223–71 Accident and fire reporting.

As prescribed in (TAR) 48 CFR 1223.7000(a), insert the following clause:

ACCIDENT AND FIRE REPORTING (APR 2005)

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work which causes:

(1) A fatality or as much as one lost workday on the part of any employee of the Contractor or subcontractor at any tier;

(2) Damage of $1,000 or more to Government-owned or leased property, either real or personal;

(3) Damage of $1,000 or more to Contractor or subcontractor owned or leased motor vehicles or mobile equipment; or

(4) Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) above shall be accomplished by the following means:

(1) Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Government-owned or leased property (either real or personal), the total value of which is estimated at $100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his/her

authorized representative and shall be confirmed by telegram or facsimile transmission within 24 hours to the Contracting Officer. Such telegram or facsimile transmission shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.

(2) Other accident and fire reports required by paragraph (a) above may be reported by the Contractor using a state, private insurance carrier, or Contractor accident report form which provides for the statement of:

(i) The extent of injury; and

(ii) The damage and cause of the accident or fire.

Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The Contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

(End of clause)

1252.223–72 Protection of human subjects.

As prescribed in (TAR) 48 CFR 1223.7000(b), insert the following clause:

PROTECTION OF HUMAN SUBJECTS (APR 2005)

The Contractor shall comply with the National Highway Traffic Safety Administration (NHTSA) policies and procedures for the protection of human subjects participating in activities supported directly or indirectly by contracts from DOT. A copy of the applicable NHTSA policies and procedures shall be provided to offerors and/or contractors upon request. In fulfillment of its assurance:

(a) A committee competent to review projects and activities that involve human subjects shall be established and maintained by the Contractor.

(b) The committee shall be assigned responsibility to determine for each activity planned and conducted that:

(1) The rights and welfare of subjects are adequately protected;

(2) The risks to subjects are outweighed by potential benefits; and

(3) The informed consent of subjects shall be obtained by methods that are adequate and appropriate.

(c) Committee reviews shall be conducted with objectivity and in a manner to ensure the exercise of independent judgment of the members. Members shall be excluded from review of projects or activities in which they have an active role or a conflict of interests.

(d) Continuing constructive communication between the committee and the project directors must be maintained as a means of safeguarding the rights and welfare of subjects.

(e) Facilities and professional attention required for subjects who may suffer physical, psychological, or other injury as a result of participating in an activity shall be provided.

(f) The committee shall maintain records of committee review of applications and active projects, of documentation of informed consent, and of other documentation that may pertain to the selection, participation, and protection of subjects. Detailed records shall be maintained of circumstances of any review that adversely affects the rights or welfare of the individual subjects. Such materials shall be made available to DOT upon request.

(g) The retention period of such records and materials shall be as specified at (FAR) 48 CFR 4.703.

(h) Periodic reviews shall be conducted by the Contractor to assure, through appropriate administrative overview, that the practices and procedures designed for the protection of the rights and welfare of subjects are being effectively applied.

(Note: If the Contractor has or maintains a relationship with a Department of Health and Human Services approved Institutional Review Board (IRB) which can appropriately review this contract in accordance with the technical requirements and applicable NHTSA policies and procedures, that IRB will be considered acceptable for the purposes of this contract).

(End of clause)

1252.223–73 Seat belt use policies and programs.

As prescribed in (TAR) 48 CFR 1223.7000(c), insert the following clause:

SEAT BELT USE POLICIES AND PROGRAMS (APR 2005)

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the contractor is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information on how to implement such a program or for statistics on the potential benefits and cost-savings to your company or organization, please visit the Buckle Up America section of NHTSA's Web site at *www.nhtsa.dot.gov*. Additional resources are available from the Network of Employers for Traffic Safety (NETS), a public-private partnership headquartered in the Washington, DC metropolitan area, and dedicated to improving the

traffic safety practices of employers and employees. NETS is prepared to help with technical assistance, a simple, user friendly program kit, and an award for achieving the President's goal of 90 percent seat belt use. NETS can be contacted at 1–888–221–0045 or visit its Web site at *www.trafficsafety.org*.

(End of clause)

1252.228–70 Loss of or damage to leased aircraft.

As prescribed in (TAR) 48 CFR 1228.306–70(a) and (b), insert the following clause:

LOSS OF OR DAMAGE TO LEASED AIRCRAFT (DEC 1997)

(a) Except normal wear and tear, the Government assumes all risk of loss of, or damage to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 1252.228–71, ''Fair Market Value of Aircraft,'' less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor agrees that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be:

(1) Credited to the Government in determining the amount of the Government's liability; or

(2) For an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.

(End of clause)

1252.228–71 Fair market value of aircraft.

As prescribed in (TAR) 48 CFR 1228.306–70(a) and (c), insert the following clause:

FAIR MARKET VALUE OF AIRCRAFT (OCT 1994)

For purposes of the clause entitled ''Loss of or Damage to Leased Aircraft,'' the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) below:

(a) $_____; or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract.

(End of clause)

1252.228–72 Risk and indemnities.

As prescribed in (TAR) 48 CFR 1228.306–70(a) and (d), insert the following clause:

RISK AND INDEMNITIES (DEC 1997)

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, evidence of insurance shall be delivered to the Contracting Officer.

(End of clause)

1252.228–73 Notification of Miller Act payment bond protection.

As prescribed in guidance at (TAR) 48 CFR 1228.106–470, insert the following clause:

NOTIFICATION OF MILLER ACT PAYMENT BOND PROTECTION (APR 2005)

This notice clause shall be inserted by first tier subcontractors in all their subcontracts and shall contain information pertaining to

the surety that provided the payment bond under the prime contract.

(a) The prime contract is subject to the Miller Act, (40 U.S.C. 3131 et al), under which the prime contractor has obtained a payment bond. This payment bond may provide certain unpaid employees, suppliers, and subcontractors a right to sue the bonding surety under the Miller Act for amounts owed for work performed and materials delivery under the prime contract.

(b) Persons believing that they have legal remedies under the Miller Act should consult their legal advisor regarding the proper steps to take to obtain these remedies. This notice clause does not provide any party any rights against the Federal Government, or create any relationship, contractual or otherwise, between the Federal Government and any private party.

(c) The surety which has provided the payment bond under the prime contract is:

_____
(Name)

_____
(Street Address)

_____
(City, State, Zip Code)

_____
(Contact & Tel. No.)

(End of clause)

1252.231–70 Date of incurrence of costs.

As prescribed in (TAR) 48 CFR 1231.205–32(b), insert the following clause:

DATE OF INCURRENCE OF COSTS (OCT 1994)

The Contractor shall be entitled to reimbursement for costs incurred on or after _____ in an amount not to exceed $_____ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

1252.235–70 Research misconduct.

As prescribed in (TAR) 48 CFR 1235.7000, insert the following clause:

RESEARCH MISCONDUCT (APR 2005)

(a) *Definitions.* As used in this clause—

Adjudication means the process of reviewing recommendations from the investigation phase and determining appropriate corrective actions.

Complainant is the person who makes an allegation of research misconduct or the person who cooperates with an inquiry or investigation.

DOT Oversight Organization is the DOT operating administration or secretarial office sponsoring or managing Federally funded research.

Evidence includes, but is not limited to, research records, transcripts, or recordings of interviews, committee correspondence, administrative records, grant applications and awards, manuscripts, publications, expert analyses, and electronic data.

Fabrication is making up data or results and recording or reporting them.

Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Inquiry is preliminary information gathering and fact finding to determine if an allegation, or apparent instance of research misconduct, warrants an investigation.

Investigation is formal collection and evaluation of information and facts to determine if research misconduct can be established, to assess its extent and consequences, and to recommend appropriate action.

Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit. Research misconduct does not include honest error or differences of opinion.

Research and Technology Coordinating Council (RTCC) is the lead DOT entity for coordination of all actions related to allegations of research misconduct. The respondent in a research misconduct finding may appeal through the RTCC to the Deputy Secretary of Transportation.

Research Institution includes any contractor conducting research under DOT funded contractual instruments, agreements and similar instruments.

Research misconduct means fabrication, falsification, or plagiarism, in proposing, performing, or reviewing research, or in reporting research results.

Research record is the record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

Respondent is the person against whom an allegation of research misconduct has been made, or the person whose actions are the focus of the inquiry or investigation.

(b) *General Guidelines.* (1) Confidentiality. DOT organizations, including research organizations, are required to safeguard the confidentiality of the inquiry, investigation and decision-making processes, including maintaining complete confidentiality of all records and identities of respondents and complainants.

(2) Retaliation prohibited. If a complainant who has reported possible research misconduct alleges retaliation on the part of

DOT organization management, the report will be addressed by management officials who will conduct an inquiry into the allegations followed by an appropriate management action.

(3) Separation of Phases. DOT organizations and research organizations must ensure the separation of the Inquiry, Investigation and Determination Phases of this process.

(4) In general, DOT organizations must strive to protect the interests of the Federal Government and the public in carrying out this process.

(c) *Elements to support a finding of research misconduct*. Research institutions (including contractors) that receive Department of Transportation (DOT) funds shall respond to allegations of research misconduct. The following elements describe the type of behavior, level of intent and burden of proof required to support a finding of research misconduct:

(1) There must be a significant departure from the accepted practices of the relevant research community;

(2) The misconduct must have been committed intentionally, or knowingly, or recklessly and;

(3) The allegation must be proven by a preponderance of the evidence.

(d) *DOT Oversight Organization Investigation*. The DOT oversight organization may proceed with its own investigation at any time if:

(1) DOT determines the institution is not prepared to handle the allegation in a manner consistent with this policy;

(2) DOT involvement is needed to protect the public interest, including public health and safety;

(3) The allegation involves an entity of sufficiently small size (or an individual) that it cannot sufficiently conduct the investigation itself.

(4) The DOT oversight organization may take, or cause to be taken, interim administrative actions (including special certifications, assurances, or other administrative actions) when deemed appropriate to protect the welfare of human and animal subjects of research, prevent inappropriate use of Federal funds, or otherwise protect the public interest and safety.

(e) *Investigating research misconduct*. Research Institutions, or in limited circumstances discussed in Section b, the DOT Oversight Organization, shall use the following procedures to investigate allegations of research misconduct:

(1) Inquire promptly into the research misconduct allegation and complete an initial inquiry within 60 calendar days after receipt of the allegation.

(2) Notify the contracting officer immediately, in writing, when an inquiry results in a determination that an investigation is warranted, and promptly begin an investigation.

(3) Ensure the objectivity and expertise of the individuals selected to review allegations and conduct investigations.

(4) Conduct the investigation according to established internal procedures and complete it within 120 calendar days of completing the initial inquiry.

(5) Document the investigation. Include documentation that:

(i) Describes the allegation(s);

(ii) Lists the investigators;

(iii) Describes the methods and procedures used to gather information and evaluate the allegation(s);

(iv) Summarizes the records and data compiled, states the findings, and explains the supporting reasons and evidence;

(v) States the potential impact of any research misconduct; and

(vi) Describes and explains any institutional sanctions or corrective actions recommended, or imposed as appropriate within its jurisdiction and as consistent with other relevant laws.

(6) Provide the respondent (the person against whom an allegation of research misconduct has been made) with a reasonable opportunity (e.g., 30 calendar days) to review and respond to the investigation report. The respondent's written comments or rebuttal will be made part of the investigative record.

(7) Within 30 calendar days after completion of an investigation, forward investigative reports, documentation, and respondent's response to the contracting officer who will coordinate with the oversight organization(s) sponsoring and/or monitoring the federally funded research.

(8) Time extensions. Contractors should request time extensions as needed, from the contracting officer of the appropriate DOT oversight organization. The contracting officer has discretion to waive time requirements for good cause.

(f) *Activity sanctions or corrective actions*. Upon receipt of the investigative reports from the contractor, the DOT oversight organization, in conjunction with the contracting officer, will review the report and determine the appropriate administrative action to be taken. In deciding what actions to take, the oversight organizations should consider: the severity of the misconduct; the degree to which the misconduct was knowing, intentional or reckless; and whether it was an isolated event or part of a pattern. Sanctions or corrective actions may range as follows:

(1) *Minimal restrictions*—such as a letter of reprimand, additional conditions on awards, requiring third-party certification of accuracy or compliance with particular policies, regulations, guidelines, or special terms and conditions;

(2) *Moderate restrictions*—such as limitations on certain activities or expenditures under an active award, or special reviews of requests for funding;

(3) *More severe restrictions*—such as termination of an active award, or government-wide suspension or debarment.

(i) When the DOT oversight organization concludes an investigation with a determination of research misconduct, the DOT Office of the Senior Procurement Executive may notify any other sources of research that provide support to the respondent that a finding of research misconduct has been made.

(ii) If there are reasonable indications that criminal violations may have occurred, the DOT oversight organization shall consult with the Office of Inspector General to determine an appropriate course of action, including disbarment or suspension. The DOT oversight organization will notify the respondent in writing of its action, sanctions to be imposed if applicable, and the DOT appeal procedures.

(g) *Appeals and Final Administrative Action.* (1) The Federal Acquisition Regulation (FAR) governs in all matters pertaining to termination of the contract, and suspension/debarment.

(2) In all other cases, the contractor may appeal the sanction or corrective action through the DOT Research and Technology Coordinating Council (RTCC) to the Deputy Secretary of Transportation, in writing within 30 calendar days after receiving written notification of the research misconduct finding and associated administrative action(s). The contractor shall mail a copy of the appeal to the contracting officer.

(3) If there is no request for appeal within 30 calendar days, the administrative actions of the oversight organization shall be final.

(4) If a request for appeal is received by the RTCC within the 30 calendar day limit, the Deputy Secretary may have the RTCC review the appeal and make recommendations.

(5) The RTCC on behalf of the Deputy Secretary will normally inform the appellant of the final decision on an appeal within 60 calendar days of receipt. This decision will then be the final DOT administrative action.

(h) *Criminal or Civil Fraud Violations.* When the oversight organization concludes an investigation with a determination of research misconduct, the DOT Office of the Senior Procurement Executive may notify any other sources of research that provide support to the respondent. If criminal or civil fraud violations may have occurred, the oversight organization should promptly refer the matter to the DOT Inspector General, the Department of Justice or other appropriate investigative body.

(End of clause)

1252.236–70 Special precautions for work at operating airports.

As prescribed in (TAR) 48 CFR 1236.570, insert the following clause:

SPECIAL PRECAUTIONS FOR WORK AT OPERATING AIRPORTS (OCT 1994)

(a) When work is to be performed at an operating airport, the Contractor must arrange its work schedule so as not to interfere with flight operations. Such operations will take precedence over construction convenience. Any operations of the Contractor which would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be the electric type of not less than 100 watts intensity placed and supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed so as to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and material in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day and when directed by the Contracting Officer, with red obstruction lights at nights. All equipment operating on the apron, taxiway, runway, and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways, or parking areas as truck or equipment routes will not be permitted unless specifically authorized for such use. Flag personnel shall be furnished by the Contractor at points on apron and taxiway for

safe guidance of its equipment over these areas to assure right of way to aircraft. Areas and routes used during the contract must be returned to their original condition by the Contractor. The maximum speed allowed at the airport shall be established by airport management. Vehicles shall be operated so as to be under safe control at all times, weather and traffic conditions considered. Vehicles must be equipped with head and tail lights during the hours of darkness.

(End of clause)

1252.237–70 Qualifications of contractor employees.

As prescribed in (TAR) 48 CFR 1237.110(a), insert the following clause:

QUALIFICATIONS OF CONTRACTOR EMPLOYEES (APR 2005)

a. Definitions. As used in this clause—''Sensitive Information'' is any information that, if subject to unauthorized access, modification, loss, or misuse, or is proprietary data, could adversely affect the national interest, the conduct of Federal programs, or the privacy of individuals specified in The Privacy Act, 5 U.S.C. 552a, but has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

b. Work under this contract may involve access to sensitive information which shall not be disclosed by the contractor unless authorized in writing by the contracting officer. To protect sensitive information, the contractor shall provide training to any contractor employees authorized to access sensitive information, and upon request of the Government, provide information as to an individual's suitability to have authorization.

c. The Contracting Officer may require dismissal from work those employees deemed incompetent, careless, insubordinate, unsuitable, or otherwise objectionable, or whose continued employment is deemed contrary to the public interest or inconsistent with the best interest of national security.

d. Contractor employees working on this contract must complete such forms, as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's request, the Contractor's employees shall be fingerprinted, or subject to other investigations as required.

e. The Contractor shall ensure that contractor employees are:

(1) Citizens of the United States of America or an alien who has been lawfully admitted for permanent residence or employment (indicated by immigration status) as evidenced Bureau of Citizenship and Immigration Services documentation; and

(2) Have background investigations according to DOT Order 1630.2B, Personnel Security Management.

f. The Contractor shall immediately notify the contracting officer when an employee no longer requires access to DOT computer systems due to transfer, completion of a project retirement or termination of employment.

g. The Contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

(End of clause)

1252.237–71 Certification of data.

As prescribed in (TAR) 48 CFR 1213.7101 and 1237.7003, insert the following provision:

CERTIFICATION OF DATA (APR 2005)

NOTICE: The Secretary of Transportation has determined that this certification shall be retained in accordance with Section 4301(b)(1)(B)(i)(II) of the Federal Acquisition Reform Act (Public Law 104–106, 41 U.S.C. 425, note) and DOT Memorandum dated July 17, 1996.

(a) The offeror represents and certifies that to the best of its knowledge and belief, the information and/or data (e.g., company profile; qualifications; background statements; brochures) submitted with its offer is current, accurate, and complete as of the date of its offer.

(b) The offeror understands that any inaccurate data provided to the Department of Transportation may subject the offeror, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) enforcement action for false claims or statements pursuant to the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801–3812 and 49 CFR part 31 and/or; (3) termination for default under any contract resulting from its offer and/or; (4) debarment or suspension.

(c) The offeror agrees to obtain a similar certification from its subcontractors.

Signature: _____

Date: _____

Typed Name and Title:

_____

_____

Company Name:

_____

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the

maker subject to prosecution under 18 U.S.C. 1001.

(End of provision)

1252.237–72 Prohibition on advertising.

As prescribed in (TAR) 48 CFR 1213.7101 and 1237.7003, insert the following clause:

PROHIBITION ON ADVERTISING (JAN 1996)

The contractor or its representatives (including training instructors) shall not advertise or solicit business from attendees for private, non-Government training during contracted-for training sessions. This prohibition extends to unsolicited oral comments, distribution or sales of written materials, and/or sales of promotional videos or audio tapes. The contractor agrees to insert this clause in its subcontracts.

(End of clause)

1252.237–73 Key personnel.

As prescribed in (TAR) 48 CFR 1237.110(b), insert the following clause:

KEY PERSONNEL (APR 2005)

(a) The personnel as specified below are considered essential to the work being performed under this contract and may, with the consent of the contracting parties, be changed from time to time during the course of the contract by adding or deleting personnel, as appropriate.

(b) Before removing, replacing, or diverting any of the specified individuals, the Contractor shall notify the contracting officer, in writing, before the change becomes effective. The Contractor shall submit information to support the proposed action to enable the contracting officer to evaluate the potential impact of the change on the contract. The Contractor shall not remove or replace personnel under this contract until the Contracting Officer approves the change.

The Key Personnel under this Contract are: (*specify key personnel*)

(End of clause)

1252.239–70 Security requirements for unclassified information technology resources.

As prescribed in (TAR) 48 CFR 1239.70, insert the following clause:

SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (APR 2005)

(a) The Contractor shall be responsible for Information Technology security for all systems connected to a Department of Transportation (DOT) network or operated by the Contractor for DOT, regardless of location. This clause is applicable to all or any part of the contract that includes information technology resources or services in which the Contractor has physical or electronic access to DOT's sensitive information that directly supports the mission of DOT. The term ''information technology,'' as used in this clause, means any equipment or interconnected system or subsystem of equipment, including telecommunications equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. This includes both major applications and general support systems as defined by OMB Circular A–130. Examples of tasks that require security provisions include:

(1) Hosting of DOT e-Government sites or other IT operations;

(2) Acquisition, transmission or analysis of data owned by DOT with significant replacement cost should the contractor's copy be corrupted; and

(3) Access to DOT general support systems/major applications at a level beyond that granted the general public, e.g. bypassing a firewall.

(b) The Contractor shall develop, provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. The plan shall describe those parts of the contract to which this clause applies. The Contractor's IT Security Plan shall comply with applicable Federal Laws that include, but are not limited to, 40 U.S.C. 11331, the Federal Information Security Management Act (FISMA) of 2002 and the E-Government Act of 2002. The plan shall meet IT security requirements in accordance with Federal and DOT policies and procedures, as they may be amended from time to time during the term of this contract that include, but are not limited to:

(1) OMB Circular A–130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources;

(2) National Institute of Standards and Technology (NIST) Guidelines;

(3) Departmental Information Resource Management Manual (DIRMM) and associated guidelines; and

(4) DOT Order 1630.2B, Personnel Security Management

(c) Within 30 days after contract award, the contractor shall submit the IT Security Plan to the DOT Contracting Officer for acceptance. This plan shall be consistent with and further detail the approach contained in

the offeror's proposal or sealed bid that resulted in the award of this contract and in compliance with the requirements stated in this clause. The plan, as accepted by the Contracting Officer, shall be incorporated into the contract as a compliance document. The Contractor shall comply with the accepted plan.

(d) Within 6 months after contract award, the contractor shall submit written proof of IT Security accreditation to the DOT for acceptance by the DOT Contracting Officer. Such written proof may be furnished either by the Contractor or by a third party. Accreditation must be in accordance with DOT Order 1350.2, which is available from the Contracting Officer upon request. This accreditation will include a final security plan, risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. This accreditation, when accepted by the Contracting Officer, shall be incorporated into the contract as a compliance document, and shall include a final security plan, a risk assessment, security test and evaluation, and disaster recovery/continuity of operations plan. The contractor shall comply with the accepted accreditation documentation.

(e) On an annual basis, the contractor shall submit verification to the Contracting Officer that the IT Security Plan remains valid.

(f) The contractor will ensure that the following banners are displayed on all DOT systems (both public and private) operated by the contractor prior to allowing anyone access to the system:

GOVERNMENT WARNING

WARNINGWARNING**WARNING**

Unauthorized access is a violation of U.S. Law and Department of Transportation policy, and may result in criminal or administrative penalties. Users shall not access other user's or system files without proper authority. Absence of access controls IS NOT authorization for access! DOT information systems and related equipment are intended for communication, transmission, processing and storage of U.S. Government information. These systems and equipment are subject to monitoring by law enforcement and authorized Department officials. Monitoring may result in the acquisition, recording, and analysis of all data being communicated, transmitted, processed or stored in this system by law enforcement and authorized Department officials. Use of this system constitutes consent to such monitoring.

WARNINGWARNING**WARNING**

(g) The contractor will ensure that the following banner is displayed on all DOT systems that contain Privacy Act information operated by the contractor prior to allowing anyone access to the system:

This system contains information protected under the provisions of the Privacy Act of 1974 (Public Law 93–579). Any privacy information displayed on the screen or printed shall be protected from unauthorized disclosure. Employees who violate privacy safeguards may be subject to disciplinary actions, a fine of up to $5,000, or both.

(h) Contractor personnel requiring privileged access or limited privileged access to systems operated by the Contractor for DOT or interconnected to a DOT network shall be screened at an appropriate level in accordance with DOT Order 1630.2B, Personnel Security Management, as it may be amended from time to time during the term of this contract.

(i) The Contractor shall ensure that its employees, in performance of the contract performing under this contract, receive annual IT security training in accordance with OMB Circular A–130, FISMA, and NIST requirements, as they may be amended from time to time during the term of this contract, with a specific emphasis on rules of behavior.

(j) The Contractor shall afford the Government access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection (to include vulnerability testing), investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of DOT data or to the function of information technology systems operated on behalf of DOT, and to preserve evidence of computer crime.

(k) The Contractor shall incorporate the substance of this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(l) The contractor shall immediately notify the contracting officer when an employee terminates employment that has access to DOT information systems or data.

(End of clause)

1252.239–71 Information technology security plan and accreditation.

As prescribed in (TAR) 48 CFR 1239.70, insert the following provision:

INFORMATION TECHNOLOGY SECURITY PLAN AND ACCREDITATION (APR 2005)

All offers submitted in response to this solicitation must address the approach for completing the security plan and accreditation requirements in TAR clause 1252.239–70.

(End of provision)

1252.242–70 Dissemination of information—educational institutions.

As prescribed in (TAR) 48 CFR 1242.7000(a), insert the following clause:

DISSEMINATION OF INFORMATION—EDUCATIONAL INSTITUTIONS (OCT 1994)

(a) The Department of Transportation (DOT) desires widespread dissemination of the results of funded transportation research. The Contractor, therefore, may publish (subject to the provisions of the ''Data Rights'' and ''Patent Rights'' clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media (a thesis or collection of theses should not be used to distribute results because dissemination will not be sufficiently widespread). All costs of publication pursuant to this clause shall be borne by the Contractor and shall not be charged to the Government under this or any other Federal contract.

(b) Any copy of material published under this clause must contain acknowledgment of DOT's sponsorship of the research effort and a disclaimer stating that the published material represents the position of the author(s) and not necessarily that of DOT. Articles for publication or papers to be presented to professional societies do not require the authorization of the Contracting Officer prior to release. However, two copies of each article shall be transmitted to the Contracting Officer at least two weeks prior to release or publication.

(c) Press releases concerning the results or conclusions from the research under this contract shall not be made or otherwise distributed to the public without prior written approval of the Contracting Officer.

(d) Publication under the terms of this clause does not release the Contractor from the obligation of preparing and submitting to the Contracting Officer a final report containing the findings and results of research, as set forth in the schedule of the contract.

(End of clause)

1252.242–71 Contractor testimony.

As prescribed in (TAR) 48 CFR 1242.7000(b), insert the following clause:

CONTRACTOR TESTIMONY (OCT 1994)

All requests for the testimony of the Contractor or its employees, and any intention to testify as an expert witness relating to: (a) Any work required by, and/or performed under, this contract; or (b) any information provided by any party to assist the Contractor in the performance of this contract, shall be immediately reported to the Contracting Officer. Neither the Contractor nor its employees shall testify on a matter related to work performed or information provided under this contract, either voluntarily or pursuant to a request, in any judicial or administrative proceeding unless approved, in advance, by the Contracting Officer or required by a judge in a final court order.

(End of clause)

1252.242–72 Dissemination of contract information.

As prescribed in (TAR) 48 CFR 1242.7000(c), insert the following clause:

DISSEMINATION OF CONTRACT INFORMATION (OCT 1994)

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. Two copies of any material proposed to be published or distributed shall be submitted to the Contracting Officer.

(End of clause)

1252.242–73 Contracting officer's technical representative.

As prescribed in (TAR) 48 CFR 1242.7000(d), insert the following clause:

CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (OCT 1994)

(a) The Contracting Officer may designate Government personnel to act as the Contracting Officer's Technical Representative (COTR) to perform functions under the contract such as review and/or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the Contractor within five working days after contract award or for construction, not less than five working days prior to giving the contractor the notice to proceed. The designation letter will set forth the authorities and limitations of the COTR under the contract.

(b) The Contracting Officer cannot authorize the COTR or any other representative to sign documents (i.e., contracts, contract modifications, etc.) that require the signature of the Contracting Officer.

(End of clause)

1252.245–70 Government property reports.

As prescribed in (TAR) 48 CFR 1245.505–70, insert the following clause:

GOVERNMENT PROPERTY REPORTS (OCT 1994)

(a) The Contractor shall prepare an annual report of Government property in its possession and the possession of its subcontractors.

(b) The report shall be submitted to the Contracting Officer not later than September 15 of each calendar year on Form DOT F 4220.43, Contractor Report of Government Property.

(End of clause)

APPENDIX TO PART 1252—TAR MATRIX

TAR MATRIX

Key:

P or C =	Provision or Clause
BR =	Is Incorporation By Reference authorized?
UCF =	Uniform Contract Format Section, when applicable
R =	Required
A =	Required-When-Applicable
O =	Optional
X =	Revision

Principle type and/or purpose of contract:

FP SUP =	Fixed-Price Supply	COM SVC =	Communication Services
CR SUP =	Cost-Reimbursement Supply	DDR =	Dismantling, Demolition, or Removal of Improvements
FP R&D =	Fixed-Price Research & Development		
CR R&D =	Cost-Reimbursement Research & Development	A-E =	Architect-Engineering
FP SVC =	Fixed-Price Service	FAC =	Facilities
CR SVC =	Cost Reimbursement Service	IND DEL =	Indefinite Delivery
FP CON =	Fixed-Price Construction	TRN =	Transportation
CR CON =	Cost Reimbursement Construction	SP =	Small Purchases
T&M LH =	Time & Material/Labor Hours	UTL SVC =	Utility Services
LMV =	Leasing of Motor Vehicles	CI =	Commercial Items

Provision or Clause	Prescribed In	P or C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC	CI
1252.211-70 Index for Specifications	1211.204-70	C	YES	I	A	A	A				A	A				A		A	A		A		
1252.216-70 Evaluation of Offers Subject to an Economic Price Adjustment Clause	1216.203-470	P	YES	M	A		A		A		A		A	A	A	A	A	A	A	A		A	
1252.216-71 Determination of Award Fee	1216.406-70(a)	C	YES	I		A		A		A		A	A		A	A			A	A			
1252.216-72 Performance Evaluation Plan	1216.406-70(b)	C	YES	I		A		A		A		A	A		A	A			A	A			
1252.216-73 Distribution of Award Fee	1216.406-70(c)	C	YES	I		A		A		A		A	A		A	A			A	A			
1252.216-74 Settlement of Letter Contract	1216.603-4	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
1252.217-70 Guarantee	1217.7000(a)	C	YES	I					A														
1252.217-71 Delivery & Shifting of Vessel	1217.7000(b)(i)	C	YES	I					A														
1252.217-72 Performance	1217.7000(b)(i)	C	YES	I					A														
1252.217-73 Inspection and Manner of Doing Work	1217.7000(b)(i)	C	YES	I					A														
1252.217-74 Subcontracts	1217.7000(b)(i)	C	YES	I					A														
1252.217-75 Lay Days	1217.7000(c)	C	YES	I					A														
1252.217-76 Liability and Insurance	1217.7000(b)(ii)	C	YES	I					A														

Provision or Clause	Prescribed In	P or C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC	CI
1252.217-77 Title	1217.7000(b)(ii)	C	YES	I					A														
1252.217-78 Discharge of Liens	1217.7000(b)(ii)	C	YES	I					A														
1252.217-79 Delays	1217.7000(b)(ii)	C	YES	I					A														
1252.217-80 Department of Labor Safety and Health Regulations for Ship Repair	1217.7000(b)(ii)																						
1252.219-70 Small Business and Small Disadvantaged Business Subcontracting Report	1219.708-70	C	YES	I					A														
1252.219-71 Section 8(a) Direct Award	1219.811-3(f)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
1252.219-72 Notification of Competition Limited to Eligible 8(a) Concerns Alternate III	1219.811-3(d)(3)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
1252.222-70 Strikes or Picketing Affecting Timely Completion of the Contract Work	1222.101-71(a)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
1252.222-71 Strikes or Picketing Affecting Access to a DOT Facility	1222.101-71(b)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
1252.223-70 Removal or Disposal of Hazardous Substances - Applicable Licenses and Permits	1223.303	C	YES	I					A	A	A	A	A			A		A			A		
1252.223-71 Accident and Fire Reporting	1223.7000(a)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
1252.223-72 Protection of Human Subjects	1223.7000(b)	C	YES	I	A	A	A	A	A	A			A						A		A		
1252.223-73 Seat Belt Use Policies and Programs	1223.7000(c)	C	YES	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	
1252.228-70 Loss of or Damage to Leased Aircraft	1228.306-70(a)	C	YES	I					A	A			A								A		
1252.228-71 Fair Market Value of Aircraft	1228.306-70(a)	C	YES	I					A	A			A								A		
1252.228-72 Risk and Indemnities	1228.306-70(a)	C	YES	I					A	A			A								A		

Provision or Clause	Prescribed In	P or C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC	CI
1252.228-73 Notification of Miller Act Payment Bond Protection	1228.106-470	C	YES	I							A	A											
1252.231-70 Date of Incurrence of Costs	1231.205-32(b)	C	YES	I		A		A		A		A											
1252.235-70 Research Misconduct	1235.7000	C	YES	I			R	R															
1252.236-70 Special Precautions for Work at Operating Airports	1236.570	C	YES	I							A	A	A			A	A	A			A	A	
1252.237-70 Qualifications of Contractor Employees	1237.110(a)	C	YES	I					A	A					A							A	
1252.237-71 Certification of Data	1213.7101 1237.7003(a)	P	YES	K					A	A					A				A		A		
1252.237-72 Prohibition on Advertising	1213.7101 1237.7003(a)	C	YES	I					A	A					A				A		A		
1252.237-73 Key Personnel	1237.110(b)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	
1252.239-70 Security Requirements for Unclassified Information Technology Resources	1239.70	C	YES	I	A	A	A	A	A	A	A	A	A		A		A	A	A	A		A	
1252.239-71 Information Technology Security Plan and Accreditation	1239.70	P	YES	L	A	A	A	A	A	A	A	A	A		A		A	A	A	A		A	
1252.242-70 Dissemination of Information – Educational Institutions	1242.7000(a)	C	YES	I			A	A															
1252.242-71 Contractor Testimony	1242.7000(b)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
1252.242-72 Dissemination of Contract Information	1242.7000(c)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
1252.242-73 Contracting Officers Technical Representative	1242.7000(d)	C	YES	I	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A			
1252.245-70 Government Property Reports	1245.505-70	C	YES	I	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A			

[70 FR 76418, Dec. 27, 2005]

PART 1253—FORMS

Subpart 1253.2—Prescription of Forms

Sec.
1253.204 Administrative matters.
1253.222 Application of labor laws to Government acquisitions.
1253.222–70 Conveyance of invention rights acquired by the Government.
1253.245–70 Report of Government property.

Subpart 1253.3—Illustration of Forms

1253.303 Agency forms.
APPENDIX TO SUBPART 1253.3

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1253.2—Prescription of Forms

1253.204 Administrative matters.

The following forms are prescribed for use in the closeout of applicable contracts, as specified in (TAR) 48 CFR 1204.804–570:

(a) *Form DOT F 4220.4, Contractor's Release*. (*See* (TAR) 48 CFR 1204.804–570.) Form DOT F 4220.4 is authorized for local reproduction and a copy is furnished for this purpose in the appendix to subpart 1253.3.

(b) *Form DOT 4220.45, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts*. (*See* (TAR) 48 CFR 1204.804–570.) Form DOT F 4220.45 is authorized for local reproduction and a copy is furnished for this purpose in the appendix to subpart 1253.3.

(c) *Form DOT F 4220.46, Cumulative Claim and Reconciliation Statement*. (See (TAR) 48 CFR 1204.804–570.) Form DOT F 4220.46 is authorized for local reproduction and a copy is furnished for this purpose in the appendix to subpart 1253.3.

(d) *DD Form 882, Report of Inventions and Subcontracts*. (See (TAR) 48 CFR 1204.804–570.) DD Form 882 can be found at *http://www.aro.army.mil/forms/d882.pdf*.

1253.222 Application of labor laws to Government acquisitions.

The following form is prescribed for use in connection with the application of labor laws, as specified in (TAR) 48 CFR 1222.406–9:

Form DOT F 4220.7, Employee Claim for Wage Restitution. (See (TAR) 48 CFR 1222.406–9(c)(1).) Form DOT F 4220.7 is authorized for local reproduction and a copy is furnished for this purpose in the appendix to for subpart 1253.3.

1253.227–70 Conveyance of invention rights acquired by the Government.

The following form is prescribed as a means for contractors to report inventions made in the course of contract performance, as specified in 1227.305–4:

DD Form 882, Report of Inventions and Subcontracts. DD Form 882 can be found at *http://www.aro.army.mil/forms/d882.pdf*.

1253.245–70 Report of Government property.

The following form is prescribed for use by contractors to report Government property, as specified in (TAR) 48 CFR 1245.505–1470:

Form DOT F 4220.43, Contractor Report of Government Property. *See* 1245.505–1470.) Form DOT F 4220.43 is authorized for local reproduction and a copy is furnished for this purpose in the appendix to subpart 1253.3.

Subpart 1253.3—Illustration of Forms

1253.303 Agency forms.

This subpart contains illustrations of DOT and other agency forms specified by the TAR for use in DOT acquisitions.

Form Name	Form Number	Adobe .pdf files	Microsoft Word files
Contractor's Release Form	4220.4	4220_4.pdf	4220_4.doc
Employee Claim for Wage Restitution	4220.7	4220_7.pdf	4220_7.doc
Contractor Report of Government Property	4220.43	4220_43.pdf	4220_43.doc
Contractor's Assignment of Refunds, Rebates, Credits, and other Amounts.	4220.45	4220_45.pdf	4220_45.doc
Cumulative Claim and Reconciliation Statement	4220.46	4220_46.pdf	4220_46.doc

APPENDIX TO SUBPART 1253.3 OF PART 1253

DEPARTMENT OF TRANSPORTATION
CONTRACTOR'S RELEASE

CONTRACTOR (Name and Address) **CONTRACT NO.**	**ENTER SUM OF TOTAL OF AMOUNTS PAID AND PAYABLE** **$**

Pursuant to the terms of the above numbered contract and in consideration of the sum stated above, which has been paid or is to be paid to the Contractor, or its assignees, the Contractor, upon payment of the said sum by the UNITED STATES OF AMERICA (hereinafter called the Government), does remise, release, and discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract, except:

1. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows: (or state "None")

2. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of this contract, which are not known to the Contractor on the date of the execution of this release and of which the Contractor gives notice in writing to the Contracting Officer within the period specified in the said contract; and

3. Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability) including reasonable expenses incidental thereto, incurred by the Contractor under any provisions of the said contract relating to patents.

The Contractor agrees, in connection with patent matters and with claims which are not released as set forth above, that it will comply with all provisions of the said contract, provisions of the said contract, including without limitation those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

IN WITNESSES WHEREOF, this release has been executed this _____ day of _____, 19 ___.

WITNESSES _____ (Contractor)

_____ BY _____

_____ TITLE _____

NOTE: In the case of a corporation, witnesses are not required but the below statement must be completed.

I, _____, am the _____ secretary of the corporation named as Contractor in the foregoing release; that _____ who signed said release on behalf of the Contractor was then _____ of said corporation; release 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.

_____
Signature

DEPARTMENT OF TRANSPORTATION
EMPLOYEE CLAIM FOR WAGE RESTITUTION

TO: The Government Accountability Office Claims Division Washington, DC 20548	**CONTRACT NUMBER**
	DATE OF CLAIM
	EMPLOYEE'S FULL NAME
	SSN:

I hereby make claim for payment of unpaid wages due me in the amount of $_____

as an employee of _____ performing work
(Name of Contractor and/or Subcontractor)

under the above number at _____
(location of work)

_____. I was employed as

_____ during the period from _____
(job title) *(month/day/year)*

to _____.
(month/day/year)

This claim constitutes the total amount claimed due and unpaid for the period of employment indicated.

ADDRESS OF EMPLOYEE	**SIGNATURE OF EMPLOYEE**

DEPARTMENT OF TRANSPORTATION
CONTRACTOR REPORT OF GOVERNMENT PROPERTY

OMB Control No. 2105-0517
Expiration Date: January 31, 2007

This collection of information is mandatory and will be used to fulfill the requirements of the Transportation Acquisition Regulation (TAR). Public reporting burden 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 FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Information and Regulatory Offices, 725 17th Street, NW, Washington, DC 20503. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection is 2105-0517.

1. Contract Number: _____

2. Report Period Ending: _____

3. Contractor (Name and Address)

4. Contracting Office (Name and Address)

5. Name and location of Government-Owned, Contractor-Operated Plant (if applicable)

6. Any Government property located at a subcontractor's plant? _____ Yes _____No. If yes, give the name and address of the subcontractor(s) on an attached sheet to this report.

7. Date contractor's property control system approved? _____

8. Approved by whom? _____
Name of Agency/Office

	Starting Balance				**Ending Balance**	
9. Property Class (See FAR 45.5)	Total Acquisition Cost (in dollars)	Total Quantity (in acres or units)	Items Added in $	Items Deleted in $	Total Acquisition Cost (in dollars)	Total Quantity (in acres or units)
a. Land & Rights Therein						
b. Other Real Property						
c. Plant Equipment						
d. Special Test Equipment						
e. Special Tooling						
f. Materials in Stock (when total value exceeds $50,000)						

NOTE: This report shall include all Government property (i.e., property furnished by the Government, or acquired or fabricated by the contractor or subcontractors). By signature hereon, the contractor's property administrator declares that the report was prepared from the contractor's records that are required by FAR 45.5.

10. Typed Name of Contractor Property Administrator

11. Signature and Date

DEPARTMENT OF TRANSPORTATION
CONTRACTOR ASSIGNMENT OF REFUNDS, REBATES, CREDITS, AND OTHER AMOUNTS

Pursuant to the terms of Contract No. _____ and in consideration of the reimbursement of costs and payment of fee, as provided in the said contract and any assignment thereunder, _____ (hereinafter called the Contractor) does hereby:

1. Assign, transfer, set over the release to the UNITED STATES OF AMERICA (hereinafter called the Government), all right, title and interest to all refunds, rebates, credits or other amounts (including any interest thereon) arising out of the performance of the said contract, together with all the rights of action accrued or which may hereafter accrue thereunder.

2. Agree to take whatever action may be necessary to effect prompt collection of all refunds, rebates, credits or other amounts (including any interest thereon) due or which may become due, and to promptly forward to the UNITED STATES TREASURER checks (made payable to the Treasurer of the United States) for any proceeds so collected. The reasonable costs of any such action to effect collection shall constitute allowable costs when approved by the Contracting Officer as stated in the said contract and may be applied to reduce any amounts otherwise payable to the Government under the terms hereof.

3. Agree to cooperate fully with the Government as to any claim or suit in connection with refunds, rebates, credits or other amounts due (including any interest thereon); to execute any protest, pleading, application, power of attorney or other papers in connection with; and to permit the Government to represent it at any hearing, trial, or other proceeding arising out of such claim or suit.

IN WITNESS WHEREOF, this assignment has been executed this _____ day of _____, _____.

BY: _____
(CONTRACTOR)

By signature hereon, I, _____, declare that I am the _____ (official title) of the corporation named as Contractor in the foregoing assignment; that _____ signed said assignment on behalf of the Contractor was then _____ of said corporation by authority of its governing body and is within the scope of its corporate powers.

_____
Signature

DEPARTMENT OF TRANSPORTATION
CUMULATIVE CLAIM AND RECONCILIATION STATEMENT

1. Name of Contractor : _____
2. Address of Contractor: _____
_____
_____
3. Contract No. _____
4. Delivery/Task Order No. _____

5. The total amount claimed under the above numbered contract, delivery order, or task order number is as follows:

a. Direct Labor..... $ _____
b. Direct Material..... $ _____
c. Other Direct Costs..... $ _____
d. Overhead..... $ _____
e. G&A..... $ _____
f. Subcontract Cost..... $ _____
g. Total Costs (5a through 5f)..... $ _____
h. Fixed Fee..... $ _____
i. Total Amount Claimed..... $ _____

6. Total amount due under the above numbered contract, delivery order, task order is as follows:

a. Total Amount Claimed..... $ _____
b. Total Amount Paid by the Government under Voucher Nos. _____ thru _____ ..... $ _____
c. Total Amount (if any) Withheld, Disallowed, etc. (as explained on the attached sheet)..... $ _____
d. Total Amount Due..... $ _____

I, _____ (Full Name), as the _____ (Title)
to the best of my knowledge and belief, the above statements are correct in accordance with the records of the contractor.

_____
(Signature)