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CODE OF FEDERAL REGULATIONS

Title 48

Federal Acquisition Regulations System

Chapters 15 to 28

Revised as of October 1, 2014

Containing a codification of documents
of general applicability and future effect

As of October 1, 2014

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Cite this Code: CFR

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

Explanation

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

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

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

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

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

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OMB CONTROL NUMBERS

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

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

PAST PROVISIONS OF THE CODE

Provisions of the Code that are no longer in force and effect as of the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on any given date in the past by using the appropriate List of CFR Sections Affected (LSA). For the convenience of the reader, a ''List of CFR Sections Affected'' is published at the end of each CFR volume. For changes to the Code prior to the LSA listings at the end of the volume, consult previous annual editions of the LSA. For changes to the Code prior to 2001, consult the List of CFR Sections Affected compilations, published for 1949-1963, 1964-1972, 1973-1985, and 1986-2000.

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The term ''[Reserved]'' is used as a place holder within the Code of Federal Regulations. An agency may add regulatory information at a ''[Reserved]'' location at any time. Occasionally ''[Reserved]'' is used editorially to indicate that a portion of the CFR was left vacant and not accidentally dropped due to a printing or computer error.

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What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

What is a proper incorporation by reference? The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR part 51 are met. Some of the elements on which approval is based are:

(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR part 51.

What if the material incorporated by reference cannot be found? If you have any problem locating or obtaining a copy of material listed as an approved incorporation by reference, please contact the agency that issued the regulation containing that incorporation. If, after contacting the agency, you find the material is not available, please notify the Director of the Federal Register, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001, or call 202-741-6010.

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

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

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

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

REPUBLICATION OF MATERIAL

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

For inquiries concerning CFR reference assistance, call 202–741–6000 or write to the Director, Office of the Federal Register, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001 or e-mail *fedreg.info@nara.gov*.

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The e-CFR is a regularly updated, unofficial editorial compilation of CFR material and Federal Register amendments, produced by the Office of the Federal Register and the Government Printing Office. It is available at *www.ecfr.gov*.

CHARLES A. BARTH,
Director,
Office of the Federal Register.
October 1, 2014.

THIS TITLE

Title 48—FEDERAL ACQUISITION REGULATIONS SYSTEM is composed of seven volumes. The chapters in these volumes are arranged as follows: Chapter 1 (parts 1 to 51), chapter 1 (parts 52 to 99), chapter 2 (parts 201 to 299), chapters 3 to 6, chapters 7 to 14, chapters 15 to 28 and chapter 29 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 2014.

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

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

For this volume, Robert J. Sheehan, III was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Ann Worley.

Title 48—Federal Acquisition Regulations System

(This book contains chapters 15 to 28)

Part

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CHAPTER 16—Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation 1601

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CHAPTER 15—ENVIRONMENTAL PROTECTION AGENCY

EDITORIAL NOTE: Nomenclature changes to chapter 15 appear at 65 FR 47325, Aug. 2, 2000.

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SUBCHAPTER A—GENERAL

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PART 1501—GENERAL

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AUTHORITY: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

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

1501.000 Scope of part.

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

Subpart 1501.1—Purpose, Authority, Issuance

1501.101 Purpose.

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

[60 FR 38505, July 27, 1995]

1501.104 Applicability.

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

[62 FR 33572, June 20, 1997]

1501.105 Issuance.

1501.105–1 Publication and code arrangement.

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

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

1501.105–2 Arrangement of regulations.

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

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

1501.105–3 Copies.

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

the EPA Facilities and Support Services Division.

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

Subpart 1501.3—Agency Acquisition Regulations

1501.301 Policy.

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

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

1501.370 OMB approvals under the Paperwork Reduction Act.

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

48 CFR citation	OMB control No.
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[59 FR 18619, Apr. 19, 1994, as amended at 59 FR 32134, June 22, 1994; 61 FR 29316, June 10, 1996]

Subpart 1501.4—Deviations

1501.401 Definition.

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

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

1501.403 Individual deviations.

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

[65 FR 37291, June 14, 2000]

1501.404 Class deviations.

Requests for class deviations to the FAR and the EPAAR shall be submitted to the HCA for processing in accordance with FAR 1.404 and this section. Requests shall include the same type of information prescribed in 1501.403 for individual deviations.

[67 FR 5072, Feb. 4, 2002]

Subpart 1501.6—Contracting Authority and Responsibilities

1501.602–3 Ratification of unauthorized commitments.

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

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

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

(3) Unauthorized addition of new work;

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

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

(b)(1) *Ratification Approval*. The Chief of the Contracting Office (CCO) is delegated authority to be the ratifying official. In order to act as the ratifying official, a CCO must have delegated contracting officer authority. A CCO cannot approve a ratification if he/she acted as a contracting officer in preparing the determination and findings

required under paragraph (c)(3) of this section.

(2) The CCOs defined in 1502.100 for purposes of ratification authority only must meet the following criteria:

(i) Must possess a contracting officer's warrant and be in the 1102 job series;

(ii) Are prohibited from re-delegating their ratification authority;

(iii) Must submit copies of ratification actions to the cognizant Office of Acquisition Management Division Director at Headquarters; and

(iv) As with other ratifying officials, must abide by the other limitations on ratification of unauthorized commitments set forth in FAR 1.602–3(c) and the EPAAR.

(c) *Procedures*. (1) The program office shall notify the cognizant contracting office by memorandum of the circumstances surrounding an unauthorized commitment. The notification shall include:

(i) All relevant documents and records;

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

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

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

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

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

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

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

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

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

(2) The paying office shall forward invoice claims received in its office for improper paid advertisements to the

cognizant ratifying official for a determination regarding ratification of the action.

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

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

[55 FR 18340, May 2, 1990, as amended at 59 FR 18976, Apr. 21, 1994; 60 FR 38505, July 27, 1995; 61 FR 57337, Nov. 6, 1996; 62 FR 33572, June 20, 1997; 65 FR 37291, June 14, 2000; 65 FR 80792, Dec. 22, 2000; 67 FR 5072, Feb. 4, 2002]

1501.603 Selection, appointment, and termination of appointment.

1501.603–1 General.

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

PART 1502—DEFINITION OF WORDS AND TERMS

AUTHORITY: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

Subpart 1502.1—Definitions

1502.100 Definitions.

Chief of the Contracting Office (CCO) means the Office of Acquisition Management Division Directors at Headquarters, Research Triangle Park and Cincinnati. For purposes of ratification authority only, CCO is also defined as Regional Contracting Officer Supervisors and Office of Acquisition Management Service Center Managers. (See 1501.602–3(b)(2) for the criteria for this ratification authority).

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

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

[67 FR 5072, Feb. 4, 2002]

PART 1503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.
1503.000 Scope of part.

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1503.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

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Subpart 1503.3—Reports of Suspected Antitrust Violations [Reserved]

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1503.500–70 Policy.
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Subpart 1503.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

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

Subpart 1503.9—Whistle Blower Protections for Contractor Employees

1503.905 Procedures for investigating complaints.

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

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

1503.000 Scope of part.

This part implements FAR part 3, cites EPA regulations on employee responsibilities and conduct, establishes

responsibility for reporting violations and related actions, and provides for authorization of exceptions to policy.

Subpart 1503.1—Safeguards

SOURCE: 64 FR 47410, Aug. 31, 1999, unless otherwise noted.

1503.101–370 Personal conflicts of interest.

(a) Each EPA employee (including special employees) engaged in source evaluation and selection is required to be familiar with the provisions of 40 CFR part 3 regarding personal conflicts of interest. The employee shall inform the Source Selection Authority (SSA) in writing if his/her participation in the source evaluation and selection process could be interpreted as a possible or apparent conflict of interest. The SSA will consult with appropriate Agency officials prior to the SSA's determination. The SSA shall relieve any EPA employee who has a conflict of interest of further duties in connection with the evaluation and selection process.

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

1503.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a)(1) The Chief of the Contracting Office (CCO) is the designated official to make the decision whether support contractors are used in proposal evaluation (as authorized at FAR 15.305(c) and as restricted at FAR 37.203(d)).

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

"CERTIFICATION ON THE USE AND DISCLOSURE OF PROPOSALS"

RFP #: _____

Offeror: _____

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

2. I agree to use any proposal information only for evaluation purposes. I agree not to copy any information from the proposal(s), to use my best effort to safeguard such information physically, and not to disclose the contents of nor release any information relating to the proposal(s) to anyone outside of the evaluation team assembled for this acquisition or individuals designated by the contracting officer.

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

_____

Name and Organization)

_____

(Date of Execution)

(End of certificate)

(b) Information contained in proposals will be protected and disclosed to the extent permitted by law, and in accordance with FAR 3.104–5, 15.207, and Agency procedures at 40 CFR part 2.

Subpart 1503.2—Contractor Gratuities to Government Personnel [Reserved]

Subpart 1503.3—Reports of Suspected Antitrust Violations [Reserved]

Subpart 1503.4—Contingent Fees

1503.408 Evaluation of the SF 119.

Subpart 1503.5—Contractor Responsibility To Avoid Improper Business Practices

SOURCE: 65 FR 57103, Sept. 21, 2000, unless otherwise noted.

1503.500–70 Policy.

Government contractors must conduct themselves with the highest degree of integrity and honesty. Contractors should have standards of conduct and internal control systems that:

(a) Are suitable to the size of the company and the extent of their involvement in Government contracting.

(b) Promote such standards.

(c) Facilitate timely discovery and disclosure of improper conduct in connection with Government contracts, and

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

1503.500–71 Procedures.

(a) A contractor's system of management controls should provide for:

(1) A written code of business ethics and conduct and an ethics training program for all employees;

(2) Periodic reviews of company business practices, procedures, policies and internal controls for compliance with standards of conduct and the special requirements of Government contracting;

(3) A mechanism, such as a hotline, by which employees may support suspected instances of improper conduct, and instructions that encourage employees to make such reports;

(4) Internal and/or external audits, as appropriate.

(5) Disciplinary action for improper conduct;

(6) Timely reporting to appropriate Government officials of any suspected or possible violation of law in connection with Government contracts or any other irregularities in connection with such contracts; and

(7) Full cooperation with any Government agencies responsible for either investigation or corrective actions.

(b) Contractors who are awarded an EPA contract of $1 million or more must display EPA Office of Inspector General Hotline Posters unless the contractor has established an internal reporting mechanism and program, as described in paragraph (a) of this section.

1503.500–72 Contract clause.

As required by EPAAR 1503.500–71(b), the contracting officer shall insert the clause at 1552.203–71, Display of EPA Office of Inspector General Hotline Poster, in all contracts valued at $1,000,000 or more, including all contract options.

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

1503.600–70 Scope of subpart.

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

1503.600–71 Definitions.

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

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

1503.601 Policy.

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

(b) No contract shall be awarded without competition to a firm which employs, or proposes to employ, a current regular or special EPA employee or a former EPA regular or special employee whose employment terminated

within 365 calendar days before submission of a proposal to EPA, if either of the following conditions exits:

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

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

1503.602 Exceptions.

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

[60 FR 38505, July 27, 1995]

1503.670 Solicitation of disclosure provision.

The Contracting Officer shall insert the provision at 1552.203–70, Current/Former Agency Employee Involvement Certification, in all solicitations for sole source acquisitions.

[50 FR 14357, Apr. 11, 1985]

Subpart 1503.9—Whistle Blower Protections for Contractor Employees

1503.905 Procedures for investigating complaints.

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

[61 FR 57337, Nov. 6, 1996]

PART 1504—ADMINISTRATIVE MATTERS

Subpart 1504.6—Contract Reporting

Sec.
1504.670 [Reserved]

Subpart 1504.8—Contract Files

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

AUTHORITY: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); 41 U.S.C. 418b.

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

Subpart 1504.6—Contract Reporting

1504.670 [Reserved]

Subpart 1504.8—Contract Files

1504.804 Closeout of contract files.

1504.804–5 Detailed procedures for closing out contract files.

In addition to those procedures set forth in FAR 4.804–5, the contracting office shall, before final payment is made under a cost reimbursement type contract, verify the allowability, allocability, and reasonableness of costs claimed. Verification of total costs incurred should be obtained from the Office of Audit through the Financial Analysis and Oversight Service Center in the form of a final audit report. Similar verification of actual costs shall be made for other contracts when cost incentives, price redeterminations, or cost-reimbursement elements are involved. Termination settlement proposals shall be submitted to the Financial Analysis and Oversight Service Centerfor review by the Office of Audit as prescribed by FAR 49.107. All such audits will be coordinated through the cost advisory group in the contracting office. Exceptions to these procedures are the quick closeout procedures as described in FAR 42.708 and Unit 42 of the EPA Acquisition Handbook.

[49 FR 28246, July 11, 1984, as amended at 63 FR 46899, Sept. 3, 1998; 78 FR 46289, July 31, 2013]

SUBCHAPTER B—ACQUISITION PLANNING

PART 1505—PUBLICIZING CONTRACT ACTIONS

Sec.
1505.000 Scope of part.

Subpart 1505.2—Synopses of Proposed Contract Actions

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

Subpart 1505.5—Paid Advertisement [Reserved]

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

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

1505.000 Scope of part.

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

[50 FR 14357, Apr. 11, 1985]

Subpart 1505.2—Synopses of Proposed Contract Actions

1505.202 Exceptions.

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

[60 FR 38505, July 27, 1995]

1505.203 Publicizing and response time.

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

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

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

1505.271 [Reserved]

Subpart 1505.5—Paid Advertisement [Reserved]

PART 1506—COMPETITION REQUIREMENTS

Sec.
1506.000 Scope of part.

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

Subpart 1506.3—Other Than Full and Open Competition

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

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

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

1506.000 Scope of part.

This part implements FAR part 6. It prescribes the Environmental Protection Agency policies and procedures in

obtaining full and open competition in the acquisition process.

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

Subpart 1506.3—Other Than Full and Open Competition

1506.302–5 Authorized or required by statute.

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

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

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

[53 FR 31872, Aug. 22, 1988]

1506.303–2 Content.

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

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

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

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

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

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

PART 1508—REQUIRED SOURCES OF SUPPLY

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

Subpart 1508.8—Acquisition of Printing and Related Supplies

1508.870 Contract clause.

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

[49 FR 8838, Mar. 8, 1984]

PART 1509—CONTRACTOR QUALIFICATIONS

Sec.
1509.000 Scope of part.

Subpart 1509.4—Debarment, Suspension and Ineligibility

1509.403 Definitions.
1509.406 Debarment.
1509.406–3 Procedures.
1509.407 Suspension.
1509.407–3 Procedures.

Subpart 1509.5—Organizational Conflicts of Interest

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

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

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

1509.000 Scope of part.

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

Subpart 1509.4—Debarment, Suspension and Ineligibility

SOURCE: 65 FR 37291, June 14, 2000, unless otherwise noted.

1509.403 Definitions.

The ''Debarring Official'' and the ''Suspending Official'' as defined in FAR 9.403 is a designated individual located in the Office of Grants and Debarment. This Agency official is authorized to make the determinations and provide the notifications required under FAR subpart 9.4 or this subpart, except for the determinations required by FAR 9.405–1(a) which are to be made by the Head of the Contracting Activity. All compelling reason determinations to be made by the Debarring or Suspending Official under FAR subpart 9.4 or this subpart will be made only after coordination and consultation with the Head of the Contracting Activity. See also 2 CFR part 1532.

[65 FR 37291, June 14, 2000, as amended at 72 FR 2427, Jan. 19, 2007]

1509.406 Debarment.

1509.406–3 Procedures.

(a) *Investigation and referral*—(1) Contracting officer responsibility. (i) When contracting personnel discover information which indicates that a cause for debarment may exist, they shall promptly report such information to the cognizant Chief of the Contracting Office (CCO). Purchasing agents in simplified acquisition activities which do not come under the direct cognizance of a CCO shall report such information by memorandum, through their immediate supervisor, and addressed to the cognizant CCO responsible for their office's contract acquisitions.

(ii) Contracting officers shall review ''The List of Parties Excluded from Federal Procurement and Nonprocurement Programs'' to ensure that the Agency does not solicit offers from, award contracts to, or consent to subcontracts with listed contractors.

(2) *Chief of the Contracting Office responsibility*. When the Chief of the Contracting Office determines that sufficient information is available to indicate that a cause for debarment may exist, such information shall be promptly reported by memorandum to the HCA. The memorandum provides the Chief of the Contracting Office's assessment of the information, any investigative report or audit, and any additional information he/she has discovered.

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

(i) Notify the Director, Suspension and Debarment Division, that investigation of a potential debarment has been initiated.

(ii) Review the reported information.

(iii) Investigate as necessary to verify or develop additional information.

(iv) Refer the matter through the Suspension and Debarment Division to

the Debarring Official for consideration of debarment; request that the Suspension and Debarment Division evaluate the information and, if appropriate, refer the matter to the Debarring Official for consideration of debarment; or recommend to the Suspension and Debarment Division that the matter be closed without further action because the facts do not warrant debarment.

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

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

(4) *Any official*. When information is discovered which may indicate potential criminal or civil fraud activity, such information must be referred promptly to the EPA Office of Inspector General.

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

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

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

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

(b) [Reserved]

1509.407 Suspension.

1509.407–3 Procedures.

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

Subpart 1509.5—Organizational Conflicts of Interests

1509.500 Scope of subpart.

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

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

1509.502 Applicability.

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

1509.503 Waiver.

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

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

1509.505–4 Obtaining access to proprietary information.

Contractors gaining access to confidential business information of other companies in performing advisory services for EPA shall comply with the special requirements of 40 CFR part 2 and

the provisions of their contracts relating to the treatment of confidential business information.

1509.505–70 Information sources.

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

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

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

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

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

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

1509.507–1 Solicitation provisions.

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

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

(2) Refer prospective contractors to this subpart; and

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

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

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

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

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

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

1509.507–2 Contract clause.

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

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

(c) The Contracting Officer shall include the clause at 1552.209–74 or its alternates in the following solicitations and contracts for Superfund work in

excess of the simplified acquisition threshold and, as appropriate, in simplified acquisition procedures for Superfund work. The Contracting Officer shall include the clause at 1552.209–74 in all Response Action Contract (RAC) solicitations and contracts, except Site Specific solicitations and contracts. The term ''RAC'' in the Limitation of Future Contracting clauses includes not only RAC solicitations and contracts but other long term response action solicitations and contracts that provide professional architect/engineer, technical, and management services to EPA to support remedial response, enforcement oversight and non-time critical removal activities under the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendments Reauthorization Act of 1986; and the Robert T. Stafford Natural Disaster Act pursuant to the Federal Response Plan and other laws to help address and/or mitigate endangerment to the public health, welfare or environment during emergencies and natural disasters, and to support States and communities in preparing for the responses to releases of hazardous substances.

(1) Alternate I shall be used in all Emergency and Rapid Response Services (ERRS) solicitations and contracts, except site specific solicitations and contracts. The term ''ERRS'' in the Limitation of Future Contracting clauses includes not only ERRS solicitations and contracts but other emergency response type solicitations and contracts that provide fast responsive environmental cleanup services for hazardous substances/wastes/contaminants/material and petroleum products/oil. Environmental cleanup response to natural disasters and terrorist activities may also be required. ERRS pilot scale studies are included in the term ''treatability studies.''

(2) Alternate II shall be used in all Superfund Technical Assistance and Removal Team (START) solicitations and contracts. The term ''START'' in the Limitation of Future Contracting clauses include not only START solicitations and contracts but other site removal and technical support solicitations and contracts that include activities related to technical analyses in determining the nature and extent of contamination at a site and making recommendations regarding response technologies.

(3) Alternate III shall be used in all Environmental Services Assistance Team (ESAT) solicitations and contracts.

(4) Alternate IV shall be used in all Enforcement Support Services (ESS) solicitations and contracts. The term ''ESS'' in the Limitation of Future Contracting clauses not only includes ESS solicitation and contracts but other enforcement support type solicitations and contracts that involve removal actions, mandatory notices to Potentially Responsible Parties (PRPs), penalty assessments, public comment periods, negotiations with PRPs, and statutes of limitations for pursuing cost recovery. The enforcement support services required under the contract may be conducted to support EPA enforcement actions under any environmental statute.

(5) Alternate V shall be used in all Superfund Headquarters Support solicitations and contracts. The Contracting Officer is authorized to modify paragraph (c) of Alternate V to reflect any unique limitations applicable to the program requirements.

(6) Alternate VI shall be used in all Site Specific solicitations and contracts.

(d) The Contracting Officer shall insert the clause at 1552.209–75 in Superfund solicitations and contracts in excess of the simplified acquisition threshold, where the solicitation or contract does not include (EPAAR) 48 CFR 1552.211–74, Work Assignments, Alternate I, or a similar clause requiring conflict of interest certifications during contract performance. This clause requires an annual conflict of interest certification from contractors when the contract does not require the submission of other conflict of interest certifications during contract performance. Contracts requiring annual certifications include: Site Specific contracts, the Contract Laboratory Program (CLP), and the Sample Management Office (SMO) contracts. The annual certification requires a contractor

to certify that all organizational conflicts of interest have been reported, and that its personnel performing work under EPA contracts or relating to EPA contracts have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The annual certification shall cover the one-year period from the date of contract award for the initial certification, and a one-year period starting from the previous certification for subsequent certifications. The certification must be received by the Contracting Officer no later than 45 days after the close of the certification period covered.

[59 FR 18619, Apr. 19, 1994, as amended at 61 FR 57337, Nov. 6, 1996; 70 FR 61569, Oct. 25, 2005]

PART 1511—DESCRIBING AGENCY NEEDS

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

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

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

1511.000 Scope of part.

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

1511.011 Solicitation Provisions and Contract Clauses.

1511.011–70 Reports of work.

Contracting officers shall insert one of the contract clauses at 1552.211–70 when the contract requires the delivery of reports, including plans, evaluations, studies, analyses and manuals. The basic clause should be used when reports are specified in a contract attachment. Alternate I is used to specify reports in the contract schedule.

[78 FR 46290, July 31, 2013]

1511.011–71 [Reserved]

1511.011–72 Monthly progress report.

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

1511.011–73 Level of effort.

The Contracting Officer shall insert the clause at 1552.211–73, Level of Effort-Cost Reimbursement Term Contract, in cost-reimbursement term contracts including cost contracts without fee, cost-sharing contracts, cost-plus-fixed-fee (CPFF) contracts, cost-plus-incentive-fee contracts (CPIF), and cost-plus-award-fee contracts (CPAF).

[78 FR 46290, July 31, 2013]

1511.011–74 Work assignments.

(a) *Policy*. When issuing work assignments, the independent government cost estimate shall not be released to the contractor. In most cases the Contracting Officer (CO) should authorize the contractor to expend only the estimated labor hours necessary to develop the work plan and to initiate preliminary tasks which must be performed before work plan approval can be made. However, in cases where the uncertainties involved in the effort are of such a magnitude that there is no reasonable expectation that the contractor can estimate the level of effort required by the tasks, objectives, or outcomes of the requirement, the CO may provide a ceiling level of effort for the entire work assignment at the time of its issuance. In such cases, the specific uncertainties precluding reasonable estimation of the required level of effort on the contractor's part must be documented in the contract file.

(b) *Contract clause*. The CO shall insert the contract clause at 1552.211.74, Work Assignments, in cost-reimbursement type term form contracts when work assignments are used. For Superfund contracts, except for contracts

which require annual conflict of interest certificates (e.g. Site Specific contracts, the Contract Laboratory Program (CLP), and Sample Management Office (SMO) contracts), the CO shall use the clause with either Alternate I or Alternate II. Alternate I shall be used for contractors who have at least three (3) years of records that may be searched for certification purposes. Alternate II shall be used for contractors who do not have at least three (3) years of records that may be searched.

[77 FR 8175, Feb. 14, 2012, as amended at 78 FR 46290, July 31, 2013]

1511.011–75 Working files.

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

1511.011–76 Legal analysis.

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

1511.011–77 Final reports.

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

1511.011–78 Advisory and assistance services.

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

1511.011–79 Information resources management.

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

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1513—SIMPLIFIED ACQUISITION PROCEDURES

Sec.
1513.000 Scope of part.

Subpart 1513.1—General

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

Subpart 1513.4—Imprest Fund [Reserved]

Subpart 1513.5—Purchase Orders

1513.505 Purchase order and related forms.
1513.507 Clauses.

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

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

1513.000 Scope of part.

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

Subpart 1513.1—General

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

1513.170–1 Contents of sole source justifications.

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

Subpart 1513.4—Imprest Fund [Reserved]

Subpart 1513.5—Purchase Orders

1513.505 Purchase order and related forms.

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

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

1513.507 Clauses.

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

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

PART 1514—SEALED BIDDING

Subpart 1514.2—Solicitation of Bids

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

Subpart 1514.4—Opening of Bids and Award of Contract

1514.404 Rejection of bids.

1514.406 Mistakes in bids.

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

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

Subpart 1514.2—Solicitation of Bids

1514.201 Preparation of invitations for bids.

1514.201–6 Solicitation provisions.

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

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

1514.201–7 Contract clauses.

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

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

1514.205 Solicitation mailing lists.

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

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

Subpart 1514.4—Opening of Bids and Award of Contract

1514.404 Rejection of bids.

1514.406 Mistakes in bids.

PART 1515—CONTRACTING BY NEGOTIATION

Sec.
1515.000 Scope of part.

Subpart 1515.2—Solicitation and Receipt of Proposals and Information

1515.209 Solicitation provisions and contract clauses.

Subpart 1515.3—Source Selection

1515.302 Applicability.
1515.303 Responsibilities.
1515.305 Proposal evaluation.
1515.305–70 Scoring plans.
1515.305–71 Documentation of proposal evaluation.
1515.305–72 Release of cost information.

Subpart 1515.4—Contract Pricing

1515.404–4 Profit.
1515.404–470 Policy.
1515.404–471 EPA structured approach for developing profit or fee objectives.
1515.404–472 Other methods.
1515.404–473 Limitations.
1515.404–474 Waivers.
1515.404–475 Cost realism.
1515.408 Solicitation provisions and contract clauses.

Subpart 1515.6—Unsolicited Proposals

1515.604 Agency points of contact.
1515.606–70 Contracting methods.

AUTHORITY: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

SOURCE: 64 FR 47410, Aug. 31, 1999, unless otherwise noted.

1515.000 Scope of part.

This part implements and supplements FAR part 15. It prescribes the Environmental Protection Agency policies and procedures for contracting for supplies and services by negotiation.

Subpart 1515.2—Solicitation and Receipt of Proposals and Information

1515.209 Solicitation provisions and contract clauses.

In addition to those provisions prescribed at FAR 15.209 and in accordance with FAR 15.203(a)(4), the contracting officer shall identify and include the evaluation factors that will be considered in making the source selection and their relative importance in each solicitation.

(a) The contracting officer shall insert the provisions at 1552.215–70, ''EPA Source Evaluation and Selection Procedures—Negotiated Procurement'' and either: the provision at 1552.215–71, ''Evaluation Factors for Award,'' where all evaluation factors other than cost or price when combined are significantly more important than cost or price; or the provision in Alternate I to 1552.215–71, where all evaluation factors other than cost or price when combined are significantly less important than cost or price; or the provision in Alternate II to 1552.215–71, where all evaluation factors other than cost or price when combined are approximately equal to cost or price; or Alternate III to 1552.215–71 where award will be made to the offeror with the lowest-evaluated cost or price whose proposal meets or exceeds the acceptability standards for non-cost factors.

(b) Evaluation factors and significant subfactors should be prepared in accordance with FAR 15.305 and inserted into paragraph (b) of the provision at 1552.215–71, Alternate I, Alternate II, and if used, in Alternate III.

(c) The contracting officer shall insert the clause at 1552.215–75, Past Performance Information, or a clause substantially the same as 1552.215–75, in all competitively negotiated acquisitions with an estimated value in excess of $100,000.

[64 FR 47410, Aug. 31, 1999, as amended at 65 FR 58923, Oct. 3, 2000]

Subpart 1515.3—Source Selection

1515.302 Applicability.

FAR subpart 15.3 and this subpart apply to the selection of source or sources in competitive negotiation acquisitions in excess of the simplified acquisition threshold, except architect-engineering services which are covered in 1536.6.

1515.303 Responsibilities.

The Source Selection Authority (SSA) is established as follows:

(a) Acquisitions having a potential value of $25,000,000 or more: Service Center Manager (SCM). This authority is not redelegable.

(b) Acquisitions having a potential value of less than $25,000,000, but more than $10,000,000: SCM, who has the authority to redelegate SSA authority to a warranted 1102. If redelegated, review by another warranted 1102 designated by the SCM is also required. A Regional Contracting Officer Supervisor may act as the SSA, as determined on a case-by-case basis, by the Director, Superfund/RCRA Regional Procurement Operations Division (SRRPOD).

(c) Acquisitions having a potential value of $10,000,000 or less: The contracting officer.

[67 FR 5072, Feb. 4, 2002]

1515.305 Proposal evaluation.

1515.305–70 Scoring plans.

When trade-offs are performed (in accordance with FAR 15.101–1), the evaluation of technical and past performance shall be accomplished using the following scoring plan or one specifically developed for the solicitation, e.g., other numeric, adjectival, color rating systems, etc.

SCORING PLAN

Value	Descriptive statement
0	The factor is not addressed, or is totally deficient and without merit.

SCORING PLAN—Continued

Value	Descriptive statement
1	The factor is addressed, but contains deficiencies and/or weaknesses that can be corrected only by major or significant changes to relevant portions of the proposal, or the factor is addressed so minimally or vaguely that there are widespread information gaps. In addition, because of the deficiencies, weaknesses, and/or information gaps, serious concerns exist on the part of the technical evaluation team about the offeror's ability to perform the required work.
2	Information related to the factor is incomplete, unclear, or indicates an inadequate approach to, or understanding of the factor. The technical evaluation team believes there is question as to whether the offeror would be able to perform satisfactorily.
3	The response to the factor is adequate. Overall, it meets the specifications and requirements, such that the technical evaluation team believes that the offeror could perform to meet the Government's minimum requirements.
4	The response to the factor is good with some superior features. Information provided is generally clear, and the demonstrated ability to accomplish the technical requirements is acceptable with the possibility of more than adequate performance.
5	The response to the factor is superior in most features.

1515.305–71 Documentation of proposal evaluation.

In addition to the information required by FAR 15.305(a)(3), the technical evaluation documentation shall include:

(a) Score sheets prepared by each individual team member must be made available upon the contracting officer's request. For contracts valued at $10,000,000 or less, the technical evaluation may be recorded on the short form technical evaluation format (EPA Form 1900–61) or another form specifically developed for the solicitation; and

(b) A statement that the respective team members are free from actual or potential personal conflicts of interest, and are in compliance with the Office of Government Ethics ethics provisions at 5 CFR part 2635.

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

(d) Any documentation related to exchanges with individual offerors.

1515.305–72 Release of cost information.

(a) In accordance with FAR 15.305(a)(4), the contracting officer may release the cost/price proposals to those members of the evaluation team who are evaluating proposals at his/her discretion.

(b) These individuals would then use this information to perform a cost realism analysis as described in FAR 15.404–1(d). Any inconsistencies between the proposals and the solicitation requirements and/or any inconsistencies between the cost/price and other than cost/price proposals should be identified.

Subpart 1515.4—Contract Pricing

1515.404–4 Profit.

This section implements FAR 15.404–4 and prescribes the EPA structured approach for establishing profit or fee prenegotiation objectives.

1515.404–470 Policy.

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

(b) The purpose of EPA's structured approach is:

(1) To provide a standard method of evaluation;

(2) To ensure consideration of all relevant factors;

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

(4) To allow contractors to earn profits commensurate with the assumption of risk.

(c) The profit-analysis factors prescribed in the EPA structured approach for analyzing profit or fee include those prescribed by FAR 15.404(d)(1), and additional factors authorized by FAR 15.404(d)(2) to foster achievement of program objectives. These profit or fee factors are prescribed in 1515.404–471.

1515.404–471 EPA structured approach for developing profit or fee objectives.

(a) *General.* To properly reflect differences among contracts, and to select an appropriate relative profit/fee in consideration of these differences, weightings have been developed for application by the contracting officer to standard measurement bases representative of the prescribed profit factors cited in FAR 15.404(d) and EPAAR 1515.404–471(b)(1). Each profit factor or subfactor, or its components, has been assigned weights relative to their value to the contract's overall effort, and the range of weights to be applied to each profit factor.

(b)(1) *Profit/fee factors.* The factors set forth in this paragraph, and the weighted ranges listed after each factor, shall be used in all instances where the profit/fee is negotiated.

CONTRACTOR'S INPUT TO TOTAL PERFORMANCE

	Weight Range (Percent)
Direct material	1 to 4.
Professional/technical labor	8 to 15.
Professional/technical overhead	6 to 9.
General labor	5 to 9.
General overhead	4 to 7.
Subcontractors	1 to 4.
Other direct costs	1 to 3.
General and administrative expenses	5 to 8.
Contractor's assumption of contract cost risk	0 to 6.

(2) The contracting officer shall first measure the ''Contractor's Input to Total Performance'' by the assignment of a profit percentage within the designated weight ranges to each element of contract cost. Such costs are multiplied by the specific percentages to arrive at a specific dollar profit or fee.

(3) The amount calculated for facilities capital cost of money (FCCM) shall not be included as part of the cost base for computation of profit or fee. The profit or fee objective shall be reduced by an amount equal to the amount of facilities capital cost of money allowed. A complete discussion of the determination of facilities capital cost of money and its application and administration is set forth in FAR 31.205–10, and the appendix to the FAR (see 48 CFR 9904.414).

(4) After computing a total dollar profit or fee for the Contractor's Input to Total Performance, the contracting officer shall calculate the specific profit dollars assigned for cost risk and performance. This is accomplished by multiplying the total Government cost objective, exclusive of any FCCM, by the specific weight assigned to cost risk and performance. The contracting officer shall then determine the profit or fee objective by adding the total profit dollars for the Contractor's Input to Total Performance to the specific dollar profits assigned to cost risk and performance. The contracting officer shall use EPA Form 1900–2 in hardcopy or electronic copy equivalent to facilitate the calculation of the profit or fee objective.

(5) The weight factors discussed in this section are designed for arriving at profit or fee objectives for other than nonprofit and not-for-profit organizations. Nonprofit and not-for-profit organizations are addressed as follows:

(i) Nonprofit and not-for-profit organizations are defined as those business entities organized and operated:

(A) Exclusively for charitable, scientific, or educational purposes;

(B) Where no part of the net earnings inure to the benefit of any private shareholder or individual;

(C) Where no substantial part of the activities is for propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office; and

(D) Which are exempt from Federal income taxation under Section 51 of the Internal Revenue Code. (26 U.S.C.)

(ii) For contracts with nonprofit and not-for-profit organizations where fees are involved, special factor of −3 percent shall be assigned in all cases.

(c) *Assignment of values to specific factors*—(1) *General.* In making a judgment

on the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors, together with considerations for evaluation set forth in this paragraph.

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

(i) *Direct material (purchased parts and other material).* (A) Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required material. This evaluation shall include consideration of the number of orders and suppliers, and whether established sources are available or new sources must be developed. The contracting officer shall also determine whether the contractor will, for example, obtain the materials by routine orders or readily available supplies (particularly those of substantial value in relation to the total contract costs), or by detailed subcontracts for which the prime contractor will be required to develop complex specifications involving creative design.

(B) Consideration should be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts, and to select subcontractors, including efforts to break out subcontracts from sole sources, through the introduction of competition.

(C) Recognized costs proposed as direct material costs such as scrap charges shall be treated as material for profit evaluation.

(D) If intracompany transfers are accepted at price, in accordance with FAR 31.205–26(e), they should be excluded from the profit or fee computation. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material, labor, and overhead.

(ii) *Professional/technical and general labor.* Analysis of labor should include evaluation of the comparative quality and level of the talents and experience to be employed. In evaluating labor for the purpose of assigning profit dollars, consideration should be given to the amount of notable scientific talent or unusual or scarce talent needed, in contrast to journeyman effort or supporting personnel. The diversity, or lack thereof, of scientific and engineering specialties required for contract performance, and the corresponding need for supervision and coordination, should also be evaluated.

(iii) *Overhead and general and administrative expenses.* (A) Where practicable, analysis of these overhead items of cost should include the evaluation of the individual elements of these expenses, and how much they contribute to contract performance. This analysis should include a determination of the amount of labor within these overhead pools, and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements should be given the same profit consideration as if they were direct labor. The other elements of indirect cost pools should be evaluated to determine whether they are routine expenses such as utilities, depreciation, and maintenance, and therefore given less profit consideration.

(B) The contractor's accounting system need not break down its overhead

expenses within the classification of professional/technical overhead, general overhead and general and administrative expenses.

(iv) *Subcontractors.* (A) Subcontract costs should be analyzed from the standpoint of the talents and skills of the subcontractors. The analysis should consider if the prime contractor normally should be expected to have people with comparable expertise employed as full-time staff, or if the contract requires skills not normally available in an employer-employee relationship. Where the prime contractor is using subcontractors to perform labor which would normally be expected to be done in-house, the rating factor should generally be at or near 1 percent. Where exceptional expertise is retained, or the prime contractor is participating in the mentor-protégé program, the assigned weight should be nearer to the high end of the range.

(v) *Other direct costs.* The analysis of these costs should be similar to the analysis of direct material.

(3) *Contractor's assumption of contract cost risk.* (i) The risk of contract costs should be shifted to the fullest extent practicable to contractors, and the Government should assign a rating that reflects the degree of risk assumption. Evaluation of this risk requires a determination of the degree of cost responsibility the contractor assumes, the reliability of the cost estimates in relation to the task assumed, and the chance of the contractor's success or failure. This factor is specifically limited to the risk of contract costs. Thus, such risks of losing potential profits in other fields are not within the scope of this factor.

(ii) The first determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor, depending on selection of contract type. The extremes are a cost-plus-fixed-fee contract requiring only that the contractor use its best efforts to perform a task, and a firm-fixed-price contract for a complex item. A cost-plus-fixed-fee contract would reflect a minimum assumption of cost responsibility by the contractor, whereas a firm-fixed-price contract would reflect a complete assumption of cost responsibility by the contractor. Therefore, in the first step of determining the value given for the contractor's assumption of contract cost risk, a lower rating would be assigned to a proposed cost-plus-fixed-fee best efforts contract, and a higher rating would be assigned to a firm-fixed-price contract.

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

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

(v) Contractors are likely to assume greater cost risks only if the contracting officer objectively analyzes the risk incident to the proposed contract, and is willing to compensate contractors for it. Generally, a cost-plus-fixed-fee contract would not justify a reward for risk in excess of 1 percent, nor would a firm-fixed-price contract normally justify a reward of less than 4 percent. Where proper contract type selection has been made, the reward for risk by contract type would usually fall into the following percentage ranges:

Type of contract	Percentage ranges
Cost-plus-fixed-fee	0 to 1.
Prospective price determination	4 to 5.
Firm-fixed-price	4 to 6.

(A) These ranges may not be appropriate for all acquisitions. The contracting officer might determine that a basis exists for high confidence in the reasonableness of the estimate, and that little opportunity exists for cost reduction without extraordinary efforts. The contractor's willingness to accept ceilings on their burden rates should be considered as a risk factor for cost-plus-fixed-fee contracts.

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

1515.404–472 Other methods.

(a) Contracting officers may use methods other than those prescribed in 1515.404–470 for establishing profit or fee objectives under the following types of contracts and circumstances:

(1) Architect-engineering contracts;

(2) Personal service contracts;

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

(4) Termination settlements;

(5) Services under labor-hour and time and material contracts which provide for payment on an hourly, daily, or monthly basis, and where the contractor's contribution constitutes the furnishing of personnel.

(6) Construction contracts; and

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

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

(1) Provide the contracting officer with a technique that will ensure consideration of the relative value of the appropriate profit factors described under ''Profit Factors,'' in FAR 15.404–4(d) and

(2) Serve as a basis for documentation of the profit or fee objective.

1515.404–473 Limitations.

(a) In addition to the limitations established by statute (see FAR 15.404–4(b)(4)(i)), no administrative ceilings on profits or fees shall be established, except those identified in EPAAR (48 CFR) 1516.404–273(b).

(b) The contracting officer shall not consider any known subcontractor profit/fee as part of the basis for determining the contractor profit/fee.

1515.404–474 Waivers.

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

[64 FR 47410, Aug. 31, 1999, as amended at 67 FR 5072, Feb. 4, 2002]

1515.404–475 Cost realism.

The EPA structured approach is not required when the contracting officer is evaluating cost realism in a competitive acquisition.

1515.408 Solicitation provisions and contract clauses.

(a) In addition to those provisions and clauses prescribed in FAR 15.408, when an exception to FAR 15.403–1 does not apply and no other means available can be used to ascertain whether a fair and reasonable price can be determined, the contracting officer may insert in negotiated solicitations the provisions at—

(1) 1552.215–72 when requesting information other than cost or pricing data, for cost-reimbursable, level-of-effort-contracts. Use Alternate I for cost-reimbursable, level-of-effort contracts when the Government's requirement is for fully dedicated staff for a twelve month period(s) of performance and performance is on a Government facility; Alternate II for acquisitions for cost-reimbursable, level-of-effort contracts when the Government's requirement is for fully dedicated staff for a twelve month period(s) of performance and performance is not on a Government facility; and Alternate III if the Government's requirement is for the acquisition of supplies or equipment.

The contracting officer may make revisions, deletions, or additions to 1552.215–72 and its Alternates I-III as needed to fit an individual acquisition, and

(2) 1552.215–73, General Financial and Organizational Information.

(b) If uncompensated overtime is proposed, the resultant contract shall include the provisions at FAR 52.237–10 and include the provision at 1552.215–74. The contracting officer may use provisions substantially the same as 1552.215–74 without requesting a deviation to the EPAAR.

Subpart 1515.6—Unsolicited Proposals

1515.604 Agency points of contact.

The Director, Grants Administration Division (3903R), EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460, is the Agency contact point established to coordinate the receipt and handling of unsolicited proposals.

[64 FR 47410, Aug. 31, 1999, 65 FR 47325, Aug. 2, 2000]

1515.606–70 Contracting methods.

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

PART 1516—TYPES OF CONTRACTS

Subpart 1516.3—Cost-Reimbursement Contracts

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

Subpart 1516.4—Incentive Contracts

1516.401–1 General.
1516.401–70 Award term incentives.
1516.401–270 Definition.
1516.405–2 Cost-plus-award-fee contracts.
1516.405–270 Definitions.
1516.405–271 Limitations.
1516.405–272 Waiver.
1516.406 Contract clauses.

Subpart 1516.5—Indefinite-Delivery Contracts

1516.505 Contract clauses.

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

1516.603 Letter Contracts.
1516.603–1 What is a Notice to Proceed?
1516.603–2 What are the requirements for use of an NTP?
1516.603–3 Limitations.

AUTHORITY: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

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

Subpart 1516.3—Cost-Reimbursement Contracts

1516.301–70 Payment of fee.

The policy of EPA for cost-reimbursement, term form contracts is to make provisional payment of fee (i.e. the fixed fee on cost-plus-fixed-fee type contracts or the base fee on cost-plus-award-fee type contracts) on a percentage of work completed basis, when such a method will not prove detrimental to proper contract performance. Percentage of work completed is the ratio of the direct labor hours performed in relation to the direct labor hours set forth in the contract in clause 1552.212–

70, ''Level of Effort—Cost Reimbursement Term Contract.'' Provisional payment of fee will remain subject to withholding provisions, such as 48 CFR 52.216–8, Fixed Fee.

[56 FR 43711, Sept. 4, 1991]

1516.303 Cost-sharing contracts.

1516.303–71 Definition.

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

[61 FR 14504, Apr. 2, 1996]

1516.303–72 Policy.

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

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

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

[61 FR 14504, Apr. 2, 1996]

1516.303–73 Types of cost-sharing.

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

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

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

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

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

(3) Be necessary to accomplish project objectives;

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

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

[61 FR 14504, Apr. 2, 1996]

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

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

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

property or property in similar condition and circumstances.

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

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

[61 FR 14505, Apr. 2, 1996]

1516.303–75 Amount of cost-sharing.

(a) Contractors should contribute a reasonable amount of the total project cost covered under the contract. The ratio of cost participation should correlate to the apparent advantages available to performers and the proximity of implementing commercialization, i.e., the higher the potential for future profits, the higher the contractor's share should be.

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

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

(1) The availability of the technology to competitors;

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

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

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

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

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

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

[61 FR 14505, Apr. 2, 1996]

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

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

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

[61 FR 14505, Apr. 2, 1996]

1516.303–77 Administrative requirements.

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

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

[61 FR 14505, Apr. 2, 1996]

1516.307 Contract clauses.

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

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

(c) The Contracting Officer shall insert a clause substantially the same as 48 CFR 1552.216–76, Estimated Cost and Cost-Sharing, in solicitations and contracts where the total incurred costs are shared by the contractor on a straight percentage basis. The Contracting Officer may develop other clauses, as appropriate, following the same approach, but reflecting different cost-sharing arrangements negotiated on specific contract actions.

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

1516.370 Solicitation provision.

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

[61 FR 14505, Apr. 2, 1996]

Subpart 1516.4—Incentive Contracts

1516.401–1 General.

1516.401–70 Award term incentives.

(a) Award term incentives enable a contractor to become eligible for additional periods of performance under a current contract by achieving prescribed performance measures under that contract.

(b) Award term incentives are designed to motivate contractors to superior performance. Accordingly, the prescribed performance measures, i.e., acceptable quality levels (AQL) which must be achieved by a contractor to become eligible for an award term typically will be in excess of the AQLs necessary for Government acceptance of contract deliverables.

(c) The Award Term Incentive Plan sets forth the evaluation process, including the evaluation criteria and performance measures, and serves as the basis for award term decisions. The Award Term Incentive Plan may be unilaterally revised by the Government.

(d) Award term incentives may be used in conjunction with options. The Federal Acquisition Regulation does not prescribe a level of performance for the exercise of options, as contrasted with award term incentives, which should require superior performance as discussed in paragraph (b) of this subsection. Award term incentive periods will follow any option periods.

(e)(1) The Government has the unilateral right not to grant or to cancel award term incentive periods and the associated award term incentive plans if—

(i) The Contracting Officer has failed to initiate an award term incentive period, regardless of whether the contractor's performance permitted the Contracting Officer to consider initiating the award term incentive period; or

(ii) The contractor has failed to achieve the performance measures for the corresponding evaluation period; or

(iii) The Government notifies the contractor in writing it does not have funds available for the award term; or

(iv) The Government no longer has a need for the award term incentive period at or before the time an award term incentive period is to commence.

(2) When an award term incentive period is not granted or cancelled, any—

(i) Prior award term incentive periods for which the contractor remains otherwise eligible are unaffected.

(ii) Subsequent award term incentive periods are thereby also cancelled.

(f) Award term incentives may be appropriate for any type of service contract.

[73 FR 1980, Jan. 11, 2008]

1516.401–270 Definition.

Acceptable quality level (AQL) as used in this subpart means the minimum percent of deliverables which are compliant with a given performance standard that would permit a contractor to become eligible for an award term incentive. Because the performance necessary for eligibility for the award term incentive may be in excess of that necessary for the Government acceptance of contract deliverables, the AQLs associated with the award term incentive may exceed the AQLs associated with the acceptance of contract deliverables. For example, under contract X, acceptable performance is 75 percent of reports submitted to the Government within five days. However, to be eligible for an award term incentive, 85 percent of reports must be submitted to the Government within five days.

[73 FR 1980, Jan. 11, 2008]

1516.405–2 Cost-plus-award-fee contracts.

1516.405–270 Definitions.

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

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

[60 FR 43404, Aug. 21, 1995. Redesignated at 73 FR 1981, Jan. 11, 2008]

1516.405–271 Limitations.

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

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

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

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

[60 FR 43404, Aug. 21, 1995. Redesignated at 73 FR 1981, Jan. 11, 2008]

1516.405–272 Waiver.

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

[60 FR 43404, Aug. 21, 1995. Redesignated at 73 FR 1981, Jan. 11, 2008, as amended at 78 FR 46290, July 31, 2013]

1516.406 Contract clauses.

(a) The Contracting Officer shall insert the clause at 1552.216–70, Award fee (MAY 2000), in solicitations and contracts where a cost-plus-award-fee contract is contemplated.

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

(c) The Contracting Officer shall insert the clauses at 1552.216-77, Award Term Incentive, 1552.216–78, Award Term Incentive Plan, and 1552.216–79 Award Term Availability of Funds in solicitations and contracts when award term incentives are contemplated. The clauses at 1552.216–77 and 1552.216–78 may be used on substantially the same basis.

(d) If the Contracting Officer wishes to use the ratings set forth in the Department of Defense Contractor Performance Assessment Reporting System on the contract at hand as the basis for contractor eligibility for an award term incentive, the Contracting

Officer shall insert the clause at 1552.216–78 with its Alternate I.

[60 FR 43404, Aug. 21, 1995, as amended at 64 FR 3876, Jan. 26, 1999; 65 FR 31500, May 18, 2000. Redesignated and amended at 73 FR 1981, Jan. 11, 2008; 78 FR 46290, July 31, 2013]

Subpart 1516.5—Indefinite-Delivery Contracts

1516.505 Contract clauses.

(a) The Contracting Officer shall insert the clause in 1552.216–72, *Ordering—By Designated Ordering Officers*, or a clause substantially similar to the subject clause, in indefinite delivery/indefinite quantity type solicitations and contracts. The Contracting Officer shall insert Alternate I when formal input from the Contractor will not be obtained prior to order issuance.

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

[49 FR 8852, Mar. 8, 1984, as amended at 79 FR 37960, July 3, 2014]

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

1516.603 Letter Contracts.

1516.603–1 What is a Notice to Proceed?

(a) A Notice to Proceed (NTP) is a type of letter contract issued pursuant to FAR 16.603 under which an EPA Federal Classification Series 1102 (FCS) contracting officer or a duly authorized EPA on-scene coordinator with delegated procurement authority may initiate, in certain defined situations and subject to certain limitations and conditions, contracting actions to respond to certain situations as described in CERCLA section 104(a)(1) (42 U.S.C. 9604(a)(1)) and the Clean Water Act sections 311(c)(2) and (e)(1)(B) (33 U.S.C. 1321(c)(2) and (e)(1)(B)). An NTP may be utilized as a contractual instrument for certain—

(1) Actions that EPA is authorized to undertake under CERCLA section 104(a)(1), 42 U.S.C. 9604(a)(1), and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), to respond to situations where any hazardous substance has been released or there is a substantial threat of such a release into the environment, or there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, and

(2) Actions that EPA is authorized to undertake under sections 311(c)(2) and (e)(1)(B) of the Clean Water Act, 33 U.S.C. 1321(c)(2) and (e)(1)(B), and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), to respond when there is a discharge, or a substantial threat of a discharge (to or upon navigable waters, adjoining shorelines, the contiguous zone, or natural resources belonging to, appertaining to, or under the exclusive management of the United States), of oil or a hazardous substance from a vessel, onshore facility, or offshore facility that is a substantial threat to the public health or welfare. Pursuant to a class Justification For Other Than Full and Open Competition executed under the authority of FAR 6.302–2 and 6.303–1(c), an NTP may be issued on a non-competitive basis.

(b) What do subsections 1516.603–1 and 1516.603–2 cover? EPAAR 1516.603–1 and 1516.603–2 contain information and procedures relating to issuance and definitization of an NTP. An NTP is subject to, and must comply with, the applicable requirements for letter contracts in FAR 16.603 and the requirements in this section, and be definitized by an EPA FCS 1102 contracting officer.

[66 FR 12900, Mar. 1, 2001]

1516.603–2 What are the requirements for use of an NTP?

(a) An EPA FCS 1102 contracting officer or a duly authorized EPA on-scene coordinator with a delegation of procurement authority may issue an NTP so long as it does not exceed the limits of his or her procurement authority and only when all of the following conditions have been met:

(1) A written determination has been made by the Federal on-scene coordinator that—

(i) As authorized by and consistent with CERCLA section 104(a)(1), 42 U.S.C. 9604(a)(1), and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), the EPA must take action to respond to a hazardous substance release or substantial threat of such a release into the environment, or a release or substantial threat of a release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, or

(ii) As authorized by and consistent with the Clean Water Act sections 311(c)(2) and (e)(1)(B), 33 U.S.C. 1321(c)(2) and (e)(1)(B), and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), the EPA must take action to respond to a discharge, or a substantial threat of a discharge (to or upon navigable waters, adjoining shorelines, the contiguous zone, or natural resources belonging to, appertaining to, or under the exclusive management of the United States), of oil or a hazardous substance from a vessel, offshore facility, or onshore facility that is of such a size and character as to pose a substantial threat to the public health or welfare of the United States; and

(2) Before a duly authorized EPA on-scene coordinator with a delegation of procurement authority may issue an NTP, he or she must confirm that an EPA FCS 1102 contracting officer is not available to provide the required contracting support by the time the Federal on-scene coordinator requires the response action to be undertaken; and

(3) A written determination is made by an EPA FCS 1102 contracting officer or a duly authorized EPA on-scene coordinator with a delegation of procurement authority that there is no other existing contracting mechanism available to provide the required contracting support by the time required, including the inability of an existing emergency response contractor or other existing contract vehicle to respond in the required time frame. These conditions, as well as any other requirements applicable to NTPs or letter contracts contained in the FAR or EPAAR , must be met before an NTP can be issued by an EPA FCS 1102 contracting officer or a duly authorized EPA on-scene coordinator with a delegation of procurement authority.

(b) What should be included in an NTP? (1) Since an NTP is a type of letter contract, it is subject to the requirements of FAR 16.603. All of the relevant requirements of FAR 16.603 apply to NTP's including FAR 16.603–2, 16.603–3, and 16.603–4, and an NTP will include all appropriate FAR and EPAAR contract clauses. An NTP should also include an overall price ceiling and be as complete and definite as possible under the circumstances. To the extent NTPs require modification of any FAR or EPAAR prescribed procedures or clauses, an appropriate FAR or EPAAR deviation will be prepared.

(2) The EPA FCS 1102 contracting officer or duly authorized EPA on-scene coordinator with a delegation of procurement authority shall include in each NTP the clauses required by the FAR or EPAAR for the type of definitive contract contemplated and any additional clauses known to be appropriate for it. In addition, the following clauses must be inserted in the solicitation (if one is issued) and the NTP when an NTP is used:

(i) The clause at FAR 52.216–23, Execution and Commencement of Work, except that the term on-scene coordinator may be used in place of the term contracting officer;

(ii) The clause at FAR 52.216–24, Limitation of Government Liability, with dollar amounts completed in a manner consistent with FAR 16.603–2(d); and

(iii) The clause at FAR 52.216–25, Contract Definitization, with its paragraph (b) completed in a manner consistent with FAR 16.603–2(c) or any applicable FAR deviation. The clause at FAR 52.216–26, Payment of Allowable Costs Before Definitization, shall also be included in a solicitation (if one is issued) and NTPs if a cost-reimbursement definitive contract is contemplated.

(3) Each NTP shall, as required by the clause at FAR 52.216–25, Contract Definitization, contain a negotiated definitization schedule that includes:

(i) Dates for submission of the contractor's price proposal, required cost and pricing data, and if required, make-or-buy and subcontracting plans;

(ii) The date for the start of negotiations; and

(iii) A target date for definitization which shall be the earliest practicable date for definitization (an NTP must be definitized by an EPA FCS 1102 contracting officer). The schedule will provide for definitization of the NTP within 90 calendar days after the date of the NTP award. However, the EPA FCS 1102 contracting officer may, in extreme cases and according to agency procedures, authorize an additional period. If, after exhausting all reasonable efforts, the EPA FCS 1102 contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement as to price or fee, the clause at 52.216–25 requires the contractor to proceed with the work and provides that the contracting officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with subpart 15.4 and part 31 of the FAR, subject to appeal as provided in the Disputes clause.

(4) The maximum liability of the Government inserted in the clause at 52.216–24, Limitation of Government Liability, shall, as approved by the official who authorized the NTP, be the estimated amount necessary to cover the contractor's requirements for funds to complete the work to be performed under the NTP. However, it shall not exceed the estimated cost of the definitive contract.

(c) Are there any financial or monetary limitations on the use of an NTP? In addition to the requirements for issuance of an NTP set forth elsewhere in this subpart—

(1) The total definitized dollar value of an individual NTP shall not exceed $200,000.00, and

(2) The applicable Program Office must commit and make available appropriate funding for the emergency response action taken under the NTP prior to NTP issuance.

(d) Are there any other procedural requirements for issuance of an NTP? An NTP must be issued in writing by the EPA FCS 1102 contracting officer or the duly authorized EPA on-scene coordinator with a delegation of procurement authority using a Standard Form 33. In addition, the EPA FCS 1102 contracting officer or the EPA on-scene coordinator awarding the NTP must ensure that the NTP complies with all applicable requirements for letter contracts set forth in the FAR and the requirements of this section, includes all relevant provisions and clauses, and that all actual or potential conflict of interest or other contracting issues are identified and resolved prior to NTP issuance. To assist the EPA on-scene coordinator and EPA FCS 1102 contracting officer in their responsibilities regarding NTP award, an NTP checklist will be completed by the EPA FCS 1102 contracting officer or EPA on-scene coordinator prior to issuance of the NTP.

(e) What happens after an NTP is awarded to a contractor? (1) If an NTP is issued by a duly authorized EPA on-scene coordinator with a delegation of procurement authority, he or she must notify the cognizant EPA FCS 1102 contracting officer of the NTP award, and provide the NTP checklist to the contracting officer, as soon as possible but in no event later than the next working day after NTP issuance.

(2) Within 5 working days of the EPA on-scene coordinator's award of an NTP, the on-scene coordinator shall provide to the cognizant EPA FCS 1102 contracting officer all NTP documents, materials, and information necessary for the contracting officer to definitize the contract, and should retain a copy for his/her records. An EPA FCS 1102 contracting officer will be responsible for definitization of the NTP consistent with the definitization procedures set forth in this subpart. During the process of definitizing the NTP, the EPA FCS 1102 contracting officer will send the contractor the ''Representations, Certifications, and Other Statements of Offerors'' for completion. The contractor will complete this information, and any other required information, and submit it to the EPA FCS 1102 contracting officer prior to definitization of the NTP.

(f) The CCO, who is authorized by EPAAR 1516.603–3 to make the determination to use a letter contract, shall

make a class determination and findings authorizing EPA FCS 1102 contracting officers and duly authorized EPA on-scene coordinators with delegations of procurement authority to award NTPs pursuant to the conditions set forth in this subpart.

[66 FR 12900, Mar. 1, 2001]

1516.603–3 Limitations.

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

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

PART 1517—SPECIAL CONTRACTING METHODS

Subpart 1517.2—Options

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

AUTHORITY: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

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

Subpart 1517.2—Options

1517.204 Contracts.

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

[60 FR 12713, Mar. 8, 1995, as amended at 67 FR 5072, Feb. 4, 2002]

1517.207 Exercise of options.

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

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

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

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

1517.208 Solicitation provisions and contract clauses.

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

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

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

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

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

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

(g) The Contracting officer shall insert the clause at 1552.217–77, Option to Extend the Term of the Contract—Fixed Price, when applicable.

[49 FR 8854, Mar. 8, 1984, as amended at 65 FR 58923, Oct. 3, 2000]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1519—SMALL BUSINESS PROGRAMS

Subpart 1519.2—Policies

Sec.
1519.201 Policy.
1519.201–71 Director of Small and Disadvantaged Business Utilization.
1519.201–72 Small and disadvantaged business utilization specialists.
1519.202–5 Data collection and reporting requirements.
1519.203 Mentor-protege.
1519.204 Small disadvantaged business participation.

Subpart 1519.5—Set-Asides for Small Business

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

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

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

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

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

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

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

Subpart 1519.2—Policies

1519.201 Policy.

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

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

1519.201–71 Director of Small and Disadvantaged Business Utilization.

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

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

1519.201–72 Small and disadvantaged business utilization specialists.

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

(b) A copy of each appointment and termination of all SBS specialists shall be forwarded to the Director, OSDBU. In addition to performing the duties outlined in paragraph (c) of this section that are normally performed in the activity to which assigned, the SBS shall perform such additional functions as may be prescribed from time to time in furtherance of overall small and

small disadvantaged business utilization program goals. The SBS may be appointed on either a full- or part-time basis; however, when appointed on a part-time basis, the small business duty shall take precedence over collateral responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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

1519.202–5 Data collection and reporting requirements.

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

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

(1) Total actions and dollar value of awards;

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

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

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

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

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

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

(c) The reports identified in paragraphs (a) and (b) of this section are to be submitted to the Director, OSDBU, no later than the 20th day following

the end of the reporting period with the exception of the last report of the fiscal year which shall be submitted no later than the 30th day following the end of the fiscal year.

1519.203 Mentor-protege.

(a) The Contracting officer shall insert the clause at 1552.219–70, Mentor-Protege Program, in all contracts under which the Contractor has been approved to participate in the EPA Mentor-Protege Program.

(b) The Contracting officer shall insert the provision at 1552.219–71, Procedures for Participation in the EPA Mentor-Protege Program, in all solicitations valued at $500,000 or more which will be cost-plus-award-fee or cost-plus fixed-fee contracts.

[65 FR 58923, Oct. 3, 2000]

1519.204 Small disadvantaged business participation.

(a) The Contracting officer shall insert the provision at 1552.219–72, Small Disadvantaged Business Participation Program, or a provision substantially the same as 1552.219–72, in solicitations for acquisitions subject to FAR 19.12 that will evaluate the extent of the participation of Small Disadvantaged Business (SDB) concerns in the performance of a resulting contract.

(b) The Contracting officer shall insert the clause at 1552.219–73, Small Disadvantaged Business Targets, or one substantially the same as 1552.219–73, in solicitations and contracts for acquisitions subject to FAR 19.12 that evaluate the extent of participation of SDB concerns in the performance of the contract and which included solicitation provision 1552.219–72.

(c) The Contracting officer shall insert the evaluation provision at 1552.219–74, Small Disadvantaged Business Participation Evaluation Factor, (and assign a value to it), or one substantially the same as 1552.219–74, in solicitations for acquisitions subject to FAR 19.12 that include the provision at 1552.219–72 and will evaluate the extent of participation of SDB concerns in the performance of the contract.

[65 FR 58923, Oct. 3, 2000]

Subpart 1519.5—Set-Asides for Small Business

1519.501 Review of acquisitions.

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

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

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

1519.503 Class set-aside for construction.

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

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

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

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

1519.705–2 Determining the need for a subcontract plan.

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

1519.705–4 Reviewing the subcontracting plan.

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

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

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

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

PART 1520—LABOR SURPLUS AREA CONCERNS

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

Subpart 1520.1—General [Reserved]

Subpart 1520.3—Labor Surplus Area Subcontracting Program [Reserved]

PART 1522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1522.8—Equal Employment Opportunity

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

Subpart 1522.10—Service Contract Act of 1965 [Reserved]

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

Subpart 1522.14—Employment of the Handicapped [Reserved]

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

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

Subpart 1522.8—Equal Employment Opportunity

1522.803 Responsibilities.

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

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

1522.804 Affirmative action programs.

1522.804–2 Construction.

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

[49 FR 8857, Mar. 8, 1984; 49 FR 24734, June 15, 1984, as amended at 78 FR 46290, July 31, 2013]

Subpart 1522.10—Service Contract Act of 1965 [Reserved]

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

Subpart 1522.14—Employment of the Handicapped [Reserved]

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

Subpart 1523.3—Hazardous Material and Material Safety Data

Sec.
1523.303 Contract clause.
1523.303–70 Protection of human subjects.
1523.303–71 Decontamination of Government-furnished property.
1523.303–72 Care of laboratory animals.

Subpart 1523.7—Contracting for Environmentally Preferable Products and Services

1523.703 Policies and procedures.
1523.703–1 Acquisition of environmentally preferable meeting and conference services.

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

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

Subpart 1523.3—Hazardous Material and Material Safety Data

1523.303 Contract clause.

1523.303–70 Protection of human subjects.

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

1523.303–71 Decontamination of Government-furnished property.

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

1523.303–72 Care of laboratory animals.

Contracting officers shall insert the clause at 1552.223–72, Care of Laboratory Animals, in all contracts involving the use of experimental animals.

[65 FR 58923, Oct. 3, 2000]

Subpart 1523.7—Contracting for Environmentally Preferable Products and Services

SOURCE: 72 FR 18403, May 1, 2007, unless otherwise noted.

1523.703 Policies and procedures.

1523.703–1 Acquisition of environmentally preferable meeting and conference services.

(a) *Scope*. This section establishes policy and procedures for acquiring environmentally preferable meeting and conference services. For purposes of this section, the term ''contracting officer'' refers to any EPA employee with purchasing authority. For the purposes of this section, the term ''meeting and conference services'' refers to any purchase by an EPA employee of the use of off-site commercial facilities for an EPA event, whether the event is a meeting, conference, training session, or other purpose.

(b) *Policy*. Contracting officers must purchase environmentally preferable meeting and conference services to the greatest extent practicable. Environmental preferability is defined at FAR 2.101. Environmental preferability shall be considered in all purchases of meeting and conference services.

(c) *Procedures for micropurchases*. The contracting officer shall request information on environmentally preferable features and practices from each meeting and conference services vendor solicited using the provision or language substantially the same as the provision at 1552.223–71.

(d) *Procedures for purchases exceeding micropurchase threshold*. The contracting officer shall request information on environmentally preferable features and practices from each meeting and conference services vendor using the provision or language substantially the same as the provision at 1552.223–71,

and shall notify vendors that basis for award will be best value with price and other factors considered. Environmental preferability must be considered among the other factors. The contracting officer shall determine the relative importance of price and other factors as appropriate to the acquisition.

(e) *Contractor support for meetings and conferences*. A contract, order, work assignment or purchasing agreement that includes contractor support for meeting and conference planning and logistics must include a green meeting and conference requirement. The contracting officer shall ensure language is included in the tasking document work statement that requires the contractor to use the provision at 1552.223–71, or language approved by the contracting officer that is substantially the same as the provision, when soliciting quotes or offers for meeting and conference services on behalf of the EPA.

(f) *Solicitation Provision*. The contracting officer shall insert the provision or language substantially the same as the provision at 1552.223–71, EPA Green Meetings and Conferences, in solicitations for meeting and conference services. Contracting officers issuing an oral solicitation must also use the provision, though it may be provided to the vendor orally or electronically. Contractors soliciting quotes or offers for meeting and conference services on behalf of EPA shall use the provision, or language approved by the contracting officer that is substantially the same as the provision.

PART 1524—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1524.1—Protection of Individual Privacy

Sec.
1524.104 Solicitation provisions.

Subpart 1524.2—Freedom of Information Act [Reserved]

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

Subpart 1524.1—Protection of Individual Privacy

1524.104 Solicitation provisions.

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

[49 FR 8858, Mar. 8, 1984]

Subpart 1524.2—Freedom of Information Act [Reserved]

PART 1525—FOREIGN ACQUISITION

Subpart 1525.1—Buy American Act—Supplies [Reserved]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1527—PATENTS, DATA, AND COPYRIGHTS

Subpart 1527.4—Rights in Data and Copyrights

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

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

Subpart 1527.4—Rights in Data and Copyrights

1527.404 Basic rights in data clause.

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

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

(b) Evaluation by nongovernment evaluators;

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

(d) Emergency repairs or overhaul work;

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

[55 FR 48623, Nov. 21, 1990]

1527.409 Solicitation provisions and contract clauses.

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

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

PART 1528—BONDS OF INSURANCE

Subpart 1528.3—Insurance

1528.301 Insurance liability to third persons.

Contracting officers shall insert the clause at 1552.228–70, Insurance Liability to Third Persons, in cost-reimbursement solicitations and contracts, except those for construction and architect-engineer services.

NOTE: This clause may be used in contracts awarded utilizing architect-engineer services such as requirements for Superfund cleanups (e.g., response action contracts). The clause does not apply to Superfund indemnification for third party pollution liability or coverage for commercial pollution liability insurance as prescribed by section 119 of CERCLA as amended by SARA.

[65 FR 58923, Oct. 3, 2000. Redesignated and amended at 78 FR 46290, July 31, 2013]

PART 1529—TAXES

Subpart 1529.3—State and Local Taxes

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

Subpart 1529.4—Contract Clauses

1529.401 Domestic contracts.
1529.401–70 [Reserved]

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

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

Subpart 1529.3—State and Local Taxes

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

Contractors are responsible for determining the availability of State and local tax exemptions and obtaining such exemptions, if available, unless the Contracting Officer determines

under FAR 31.205–41(b)(3) that the administrative burden outweighs the corresponding benefit. Contractors are responsible for ensuring that subcontractors also seek and obtain such exemptions, if available.

Subpart 1529.4—Contract Clauses

1529.401 Domestic contracts.

1529.401–70 [Reserved]

PART 1530—COST ACCOUNTING STANDARDS

Subpart 1530.3—CAS Contract Requirements [Reserved]

PART 1531—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1531.1—Applicability [Reserved]

PART 1532—CONTRACT FINANCING

Sec.
1532.003 Simplified acquisition procedures financing.
1532.006 Reduction or suspension of contract payments upon finding of fraud.
1532.006–1 General.
1532.006–2 Definitions.
1532.006–3 Responsibilities.

Subpart 1532.1—General

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

Subpart 1532.2—Commercial Item Purchase Financing

1532.201 Statutory authority.

Subpart 1532.4—Advance Payments [Reserved]

Subpart 1532.8—Assignment of Claims

1532.805 Procedure.
1532.805–70 Forms.

Subpart 1532.9—Prompt Payment

1532.908 Contract clauses.

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

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

1532.003 Simplified acquisition procedures financing.

(a) *Scope*. This subpart provides for authorization of advance and interim payments on commercial item orders not exceeding the simplified acquisition threshold. Advance payments are payments that are made prior to performance. Interim payments are payments that are made during the order period according to a payment schedule.

(b) *Procedures for micropurchases*. Contracting officers may authorize advance and interim payments on orders for commercial items only at or below the micropurchase threshold.

(c) *Procedures for purchases exceeding micropurchase threshold*. Contracting officers must secure approval at one level above the contracting officer, on a case-by-case basis, for advance and interim payments on orders for commercial items exceeding the micropurchase threshold and not exceeding the simplified acquisition threshold. The contracting officer shall submit a recommendation for approval of financing terms, along with the supporting rationale for the action, to one level above the contracting officer. Remote simplified acquisition contracting officers (SACO) without one level above contracting officers at their locations shall forward recommendations through their OAM Advisors to secure one level above approval.

(d) *Supporting rationale*. Regardless of dollar value, the contracting officer shall document the file with supporting rationale demonstrating that the purchase meets the conditions of FAR 32.202–1(b)(1), (3) and (4).

(e) *Administration*. Regardless of dollar value, the contracting officer is responsible for ensuring that supplies or services have been delivered. The contracting officer shall document the file with evidence of receipt of supplies or services throughout the order period as appropriate to the acquisition.

(f) *Clause*. The contracting officer shall insert the clause at 1552.232–74, Payments—Simplified Acquisition Procedures Financing, in solicitations and

orders that will provide simplified acquisition procedures financing.

[71 FR 32283, June 5, 2006]

1532.006 Reduction or suspension of contract payments upon finding of fraud.

1532.006–1 General.

(a)–(b) [Reserved]

(c) Agency responsibilities and determinations under FAR 32.006 are, consistent with FAR 32.006–1(c), delegated to the Head of the Contracting Activity, if that individual is not below Level IV of the Executive Schedule. If the Head of the Contracting Activity is below Level IV of the Executive Schedule, then Agency responsibilities and determinations under FAR 32.006 are delegated to the Assistant Administrator for Administration and Resources Management.

[65 FR 37292, June 14, 2000]

1532.006–2 Definitions.

The Remedy Coordination Official for EPA is the Assistant Inspector General for Investigations.

[65 FR 37292, June 14, 2000]

1532.006–3 Responsibilities.

(a) EPA shall use the procedures in FAR 32.006–4 when determining whether to reduce or suspend further payments to a contractor when there is a report from the Remedy Coordination Official finding substantial evidence that the contractor's request for advance, partial or progress payments is based on fraud and recommending that the Agency reduce or suspend such payments to the contractor.

(b) [Reserved]

[65 FR 37292, June 14, 2000]

Subpart 1532.1—General

1532.102 Description of contract financing methods.

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

[60 FR 38505, July 27, 1995]

1532.111 Contract clauses.

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

1532.170 Forms.

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

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

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

Subpart 1532.2—Commercial Item Purchase Financing

1532.201 Statutory authority.

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

[61 FR 57339, Nov. 6, 1996]

Subpart 1532.4—Advance Payments [Reserved]

Subpart 1532.8—Assignment of Claims

1532.805 Procedure.

1532.805–70 Forms.

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

(b) EPA Form 1900–4, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts, at 1553.232–71 must

accompany the assignee's release prior to final payment under cost-reimbursement contracts.

(c) EPA Form 1900–5, Contractor's Assignment of Refunds, Rebates and Credits, at 1553.232–72 must be prepared by the Contractor prior to final payment under cost-reimbursement contracts and must accompany the Contractor's Release.

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

Subpart 1532.9—Prompt Payment

1532.908 Contract clauses.

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

[61 FR 29317, June 10, 1996]

PART 1533—PROTESTS, DISPUTES AND APPEALS

Subpart 1533.1—Protests

Sec.
1533.103 Protests to the Agency.

Subpart 1533.2—Disputes and Appeals

1533.203 Applicability.

AUTHORITY: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

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

Subpart 1533.1—Protests

1533.103 Protests to the Agency.

Protests to the Agency are processed pursuant to the requirements of FAR 33.103. Contracting Officers must include in every solicitation the provision at 1552.233–70, Notice of Filing Requirements for Agency Protests.

[64 FR 17110, Apr. 8, 1999]

Subpart 1533.2—Disputes and Appeals

1533.203 Applicability.

The Civilian Board of Contract Appeals (CBCA) will hear appeals from final decisions of EPA Contracting Officers issued pursuant to the Contracts Disputes Act. The rules and regulations of the CBCA appear in 48 CFR chapter 61.

[73 FR 1981, Jan. 11, 2008]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1535—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
1535.007 Solicitations.
1535.007–70 Contract clauses.

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

1535.007 Solicitations.

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

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

[62 FR 38477, July 18, 1997]

1535.007–70 Contract clauses.

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

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

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

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

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

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

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

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

(g) Contracting officers shall insert the clause at 1552.235–80, Access to Confidential Business Information (CBI), in all types of contracts when it is possible that it will be necessary for the contractor to have access to CBI during the performance of tasks required under the contract.

[49 FR 8862, Mar. 8, 1984; 49 FR 24734, June 15, 1984, as amended at 61 FR 14265, Apr. 1, 1996; 61 FR 57339, Nov. 6, 1996; 65 FR 58923, Oct. 3, 2000]

PART 1536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1536.2—Special Aspects of Contracting for Construction

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

Subpart 1536.5—Contract Clauses

1536.521 Specifications and drawings for construction.

Subpart 1536.6—Architect-Engineer Services

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

AUTHORITY: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

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

Subpart 1536.2—Special Aspects of Contracting for Construction

1536.201 Evaluation of contracting performance.

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

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

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

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

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

(f) Information from the performance report shall not be released outside of the Agency, except to other Government agencies at their written request, and on condition that the information

will not be made available outside the Government. Requests from non-Government sources for information from performance reports shall be processed in accordance with EPA's Freedom of Information Act procedures at 40 CFR part 2.

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

1536.209 Construction contracts with architect-engineer firms.

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

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

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

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

Subpart 1536.5—Contract Clauses

1536.521 Specifications and drawings for construction.

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

Subpart 1536.6—Architect-Engineer Services

1536.602 Selection of firms for architect-engineer contracts.

1536.602–2 Establishment of evaluation boards.

(a) The Environmental Protection Agency Architect-Engineer Evaluation Board is established as a central permanent Board located at Headquarters EPA under authority delegated to the Director, Office of Acquisition Management, which may be re-delegated.

(b) The Service Center Manager (SCM) is delegated the authority to appoint either one or two additional voting members as may be appropriate for a particular project.

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

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

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

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

[59 FR 18977, Apr. 21, 1994, as amended at 67 FR 5052, Feb. 4, 2002; 70 FR 61569, Oct. 25, 2005]

PART 1537—SERVICE CONTRACTING

Subpart 1537.1—Service Contracts—General

Sec.
1537.110 Solicitation provisions and contract clauses.

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

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

Subpart 1537.1—Service Contracts—General

1537.110 Solicitation provisions and contract clauses.

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

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

(b) The contracting officer shall insert a clause substantially the same as the clause in 1552.237–71, Technical Direction, in solicitations and contracts where the contracting officer intends to delegate authority to issue technical direction to the contracting officer technical representative(s).

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

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

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

(f) To ensure that Agency contracts are administered so as to avoid creating an improper employer-employee relationship, contracting officers shall insert the contract clause at 48 CFR 1552.237–76, ''Government-Contractor Relations'', in all solicitations and contracts for non-personal services that exceed the simplified acquisition threshold.

[49 FR 8864, Mar. 8, 1984, as amended at 64 FR 30444, June 8, 1999; 70 FR 61569, Oct. 25, 2005; 74 FR 37175, July 28, 2009]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1542—CONTRACT ADMINISTRATION

Subpart 1542.7—Indirect Cost Rates

Sec.
1542.703–2 Certificate of indirect costs.
1542.705 Final indirect cost rates.
1542.705–70 Solicitation and contract clause.

Subpart 1542.12—Novation and Change of Name Agreements

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

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

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

Subpart 1542.7—Indirect Cost Rates

1542.703–2 Certificate of indirect costs.

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

[61 FR 57339, Nov. 6, 1996]

1542.705 Final indirect cost rates.

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

(b) Contracting officers shall insert the clause at 1552.242–72, Financial Administrative Contracting officers (FACO), in cost-reimbursement contracts when the Environmental Protection Agency (EPA) is the cognizant federal agency and a FACO will be assigned.

[49 FR 8865, Mar. 8, 1984, as amended at 65 FR 58924, Oct. 3, 2000]

1542.705–70 Solicitation and contract clause.

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

[62 FR 33573, June 20, 1997]

Subpart 1542.12—Novation and Change of Name Agreements

1542.1200 Scope of subpart.

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

1542.1202 Responsibility for executing agreements.

(a) Any EPA contracting office upon being notified of a successor in interest to, or change of name of, one of its Contractors shall promptly report such information by memorandum to the Director, Policy, Training and Oversight Division (POTD).

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

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

1542.1203 Processing agreements.

(a) The responsible contracting office shall:

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

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

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

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

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

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

PART 1545—GOVERNMENT PROPERTY

Subpart 1545.1—General

Sec.
1545.107 Government property clauses.

Subpart 1545.3—Providing Government Property to Contractors

1545.309 Providing Government production and research property under special restrictions.

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

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

Subpart 1545.1—General

1545.107 Government property clauses.

(a) The Contracting Officer shall insert the contract clause at 1552.245–70:

(1) When it is anticipated that a Contractor will use Government-furnished or Contractor-acquired property in the cleanup of hazardous material as defined in Federal Standard No. 313, or, the toxic chemicals listed 40 CFR 372.65, in the environment.

(2) In all cost-type solicitations and contracts regardless of whether Government Property is initially provided, and in all fixed-price solicitations and contracts whenever Government furnished property is provided.

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

[74 FR 47110, Sept. 15, 2009]

Subpart 1545.3—Providing Government Property to Contractors

1545.309 Providing Government production and research property under special restrictions.

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

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

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

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

PART 1546—QUALITY ASSURANCE

Subpart 1546.7—Warranties

Sec.
1546.704 Authority for use of warranties.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

Subpart 1546.7—Warranties

1546.704 Authority for use of warranties.

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

[49 FR 8867, Mar. 8, 1984]

PART 1548—VALUE ENGINEERING [RESERVED]

SUBCHAPTER H—CLAUSES AND FORMS

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1552.2—Texts of Provisions and Clauses

Sec.
1552.203–70 Current/former agency employee involvement certification.
1552.203–71 Display of EPA Office of Inspector General Hotline Poster.
1552.204–70 [Reserved]
1552.208–70 Printing.
1552.209–70 Organizational conflict of interest notification.
1552.209–71 Organizational conflicts of interest.
1552.209–72 Organizational conflict of interest certification.
1552.209–73 Notification of conflicts of interest regarding personnel.
1552.209–74 Limitation of future contracting.
1552.209–75 Annual certification.
1552.210–71 [Reserved]
1552.210–73—1552.210–74 [Reserved]
1552.211–70 Reports of work.
1552.211–72 Monthly progress report.
1552.211–73 Level of effort—cost-reimbursement term contract.
1552.211–74 Work assignments.
1552.211–75 Working files.
1552.211–76 Legal analysis.
1552.211–77 Final reports.
1552.211–78 Management consulting services.
1552.211–79 Compliance with EPA policies for information resources management.
1552.213–70 Notice to suppliers of equipment.
1552.214–71 Contract award—other factors—formal advertising.
1552.215–70 EPA source evaluation and selection procedures—negotiated procurements.
1552.215–71 Evaluation factors for award.
1552.215–72 Instructions for the preparation of proposals.
1552.215–73 General financial and organizational information.
1552.215–74 Advanced understanding—uncompensated time.
1552.215–75 Past performance information.
1552.215–76 [Reserved]
1552.216–70 Award fee.
1552.216–71 Date of incurrence of cost.
1552.216–72 Ordering—by designated ordering officers.
1552.216–73 Fixed rates for services—indefinite delivery/indefinite quantity contract.
1552.216–74 Payment of fee.
1552.216–75 Base fee and award fee proposal.
1552.216–76 Estimated cost and cost-sharing.
1552.216–77 Award term incentive.
1552.216–78 Award term incentive plan.
1552.216–79 Award term availability of funds.
1552.217–70 Evaluation of contract options.
1552.217–71 Option to extend the term of the contract—cost-type contract.
1552.217–72 Option to extend the term of the contract—cost-plus-award-fee contract.
1552.217–73 Option for increased quantity—cost-type contract.
1552.217–74 Option for increased quantity—cost-plus-award-fee contract.
1552.217–75 Option to extend the effective period of the contract—time and materials or labor hour contract.
1552.217–76 Option to extend the effective period of the contract—indefinite delivery/indefinite quantity contract.
1552.217–77 Option to extend the term of the contract fixed price.
1552.219–70 Mentor-Protege Program.
1552.219–71 Procedures for participation in the EPA Mentor-Protege Program.
1552.219–72 Small disadvantaged business participation program.
1552.219–73 Small disadvantaged business targets.
1552.219–74 Small disadvantaged business participation evaluation factor.
1552.223–70 Protection of human subjects.
1552.223–71 EPA Green Meetings and Conferences.
1552.223–72 Care of laboratory animals.
1552.224–70 Social security numbers of consultants and certain sole proprietors and Privacy Act statement.
1552.227–76 Project employee confidentiality agreement.
1552.228–70 Insurance liability to third persons.
1552.229–70 [Reserved]
1552.232–70 Submission of invoices.
1552.232–71—1552.232–72 [Reserved]
1552.232–73 Payments—fixed rate services contract.
1552.232–74 Payments—simplified acquisition procedures financing.
1552.233–70 Notice of filing requirements for agency protests.
1552.235–70 Screening business information for claims of confidentiality.
1552.235–71 Treatment of confidential business information.
1552.235–72 [Reserved]
1552.235–73 Access to Federal Insecticide, Fungicide, and Rodenticide Act Confidential business information (APR 1996).
1552.235–74 [Reserved]

1552.235–75 Access to Toxic Substances Control Act confidential business information (APR 1996).
1552.235–76 Treatment of confidential business information (APR 1996).
1552.235–77 Data Security for Federal Insecticide, Fungicide and Rodenticide Act Confidential Business Information (DEC 1997).
1552.235–78 Data Security for Toxic Substances Control Act Confidential Business Information (DEC 1997).
1552.235–79 Release of contractor confidential business information (APR 1996).
1552.235–80 Access to confidential business information.
1552.236–70 Samples and certificates.
1552.237–70 Contract publication review procedure.
1552.237–71 Technical direction.
1552.237–72 Key personnel.
1552.237–73 [Reserved]
1552.237–74 Publicity.
1552.237–75 Paperwork Reduction Act.
1552.237–76 Government-Contractor Relations.
1552.239–70 Rehabilitation Act notice.
1552.239–103 Acquisition of Energy Star compliant microcomputers, including personal computers, monitors and printers.
1552.242–70 Indirect costs.
1552.242–72 Financial administrative contracting officer.
1552.245–70 Government property.
1552.245–73 Government property.

AUTHORITY: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

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

Subpart 1552.2—Texts of Provisions and Clauses

1552.203–70 Current/former agency employee involvement certification.

As prescribed in 1503.670, insert the following solicitation provision in all EPA solicitation documents for sole source acquisitions.

CURRENT/FORMER AGENCY EMPLOYEE INVOLVEMENT CERTIFICATION (APR 1984)

The offeror (quoter) hereby certifies that:

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

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

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

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

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

(End of provision)

[49 FR 8867, Mar. 8, 1984, as amended at 50 FR 14360, Apr. 11, 1985; 65 FR 79784, Dec. 20, 2001]

1552.203–71 Display of EPA Office of Inspector General Hotline poster.

As prescribed in 1503.500–72, insert the following clause in all contracts valued at $1,000,000 or more including all contract options.

DISPLAY OF EPA OFFICE OF INSPECTOR GENERAL HOTLINE POSTER (AUG 2000)

(a) For EPA contracts valued at $1,000,000 or more including all contract options, the contractor shall prominently display EPA Office of Inspector General Hotline posters in contractor facilities where the work is performed under the contract.

(b) Office of Inspector General hotline posters may be obtained from the EPA Office of Inspector General, ATTN: OIG Hotline (2443), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, or by calling (202) 260–5113.

(c) The Contractor need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and provided instructions that encourage employees to make such reports.

[65 FR 57103, Sept. 21, 2000]

1552.204–70 [Reserved]

1552.208–70 Printing.

As prescribed in 1508.870, insert the following clause:

PRINTING (SEP 2012)

(a) *Definitions*. ''Printing'' is the process of composition, plate making, presswork, binding and microform; or the end items produced by such processes and equipment. Printing services include newsletter production and periodicals which are prohibited under EPA contracts.

''Composition'' applies to the setting of type by hot-metal casting, photo typesetting, or electronic character generating devices for the purpose of producing camera copy, negatives, a plate or image to be used in the production of printing or microform.

''Camera copy'' (or ''camera-ready copy'') is a final document suitable for printing/duplication.

''Desktop Publishing'' is a method of composition using computers with the final output or generation of a camera copy done by a color inkjet or color laser printer. This is not considered ''printing.'' However, if the output from desktop publishing is being sent to a typesetting device (i.e., Linotronic) with camera copy being produced in either paper or negative format, these services are considered ''printing.''

''Microform'' is any product produced in a miniaturized image format, for mass or general distribution and as a substitute for conventionally printed material. Microform services are classified as printing services and include microfiche and microfilm. The contractor may make up to two sets of microform files for archival purposes at the end of the contract period of performance.

''Duplication'' means the making of copies on photocopy machines employing electrostatic, thermal, or other processes without using an intermediary such as a negative or plate.

''Requirement'' means an individual photocopying task. (There may be multiple requirements under a Work Assignment or Delivery Order. Each requirement would be subject to the duplication limitation of 5,000 copies of one page or 25,000 copies of multiple pages in the aggregate per requirement).

''Incidental'' means a draft and/or proofed document (not a final document) that is not prohibited from printing under EPA contracts.

(b) *Prohibition*. (1) The contractor shall not engage in, nor subcontract for, any printing in connection with the performance of work under this contract. Duplication of more than 5,000 copies of one page or more than 25,000 copies of multiple pages in the aggregate per requirement constitutes printing. The intent of the printing limitation is to eliminate duplication of final documents.

(2) In compliance with EPA Order 2200.4a, EPA Publication Review Procedure, the Office of Communications, Education, and Media Relations is responsible for the review of materials generated under a contract published or issued by the Agency under a contract intended for release to the public.

(c) *Affirmative Requirements*. (1) Unless otherwise directed by the contracting officer, the contractor shall use double-sided copying to produce any progress report, draft report or final report.

(2) Unless otherwise directed by the contracting officer, the contractor shall use recycled paper for reports delivered to the Agency which meet the minimum content standards for paper and paper products as set forth in EPA's Web site for the Comprehensive Procurement Guidelines at: *http://www.epa.gov/cpg/*.

(d) *Permitted Contractor Activities*. (1) The prohibitions contained in paragraph (b) do not preclude writing, editing, or preparing manuscript copy, or preparing related illustrative material to a final document (camera-ready copy) using desktop publishing.

(2) The contractor may perform a requirement involving the duplication of less than 5,000 copies of only one page, or less than 25,000 copies of multiple pages in the aggregate, using one color (black), such pages shall not exceed the maximum image size of 10¾ by 14¼ inches, or 11 by 17 paper stock. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these thresholds, contractors must immediately notify the contracting officer in writing and a waiver must be obtained. Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel. Duplication services of ''incidentals'' in excess of the thresholds are allowable.

(3) The contractor may perform a requirement involving the multi-color duplication of no more than 100 pages in the aggregate using color copier technology, such pages shall not exceed the maximum image size of 10¾ by 14¼ inches, or 11 by 17 paper stock. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these limits, contractors must immediately notify the contracting officer in writing and a waiver must be obtained. Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.

(4) The contractor may perform the duplication of no more than a total of 500 units of an electronic information storage device

(e.g., CD–ROMs, DVDs, thumb drives[1]) (including labeling and packaging) per work assignment or task order/delivery order per contract year. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these thresholds, contractors must immediately notify the contracting officer in writing and a waiver must be obtained. Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.

(e) *Violations*. The contractor may not engage in, nor subcontract for, any printing in connection with the performance of work under the contract. The cost of any printing services in violation of this clause will be disallowed, or not accepted by the Government.

(f) *Flowdown Clause*. The contractor shall include in each subcontract which may involve a requirement for any printing/duplicating/copying a provision substantially the same as this clause.

(End of clause)

[78 FR 22797, Apr. 17, 2013]

1552.209–70 Organizational conflict of interest notification.

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

ORGANIZATIONAL CONFLICT OF INTEREST NOTIFICATION (APR 1984)

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

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

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

(End of provision)

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

1552.209–71 Organizational conflicts of interest.

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

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

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

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

ORGANIZATIONAL CONFLICTS OF INTEREST (MAY 1994)

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

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

(c) The Contractor agrees that if an actual or potential organizational conflict of interest is identified during performance, the Contractor will immediately make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or

[1] Pursuant to the July 2008 guidance *Promotional Communications for EPA*, a thumb drive can be used as a promotional item, but it also must be an information medium in itself. Namely, it must have substantive EPA information already loaded into the drive. Due to its intrinsic material value, it may not be used simply or primarily to display an EPA message on the exterior of the drive.

proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict of interest. The Contractor shall continue performance until notified by the Contracting Officer of any contrary action to be taken.

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

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

(End of clause)

Alterate I. Contracts for other than Superfund work shall include Alternate I in this clause in lieu of paragraph (e).

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

[49 FR 8867, Mar. 8, 1994, as amended at 59 FR 18620, Apr. 19, 1994; 61 FR 57339, Nov. 6, 1996; 63 FR 46899, Sept. 3, 1998]

1552.209–72 Organizational conflict of interest certification.

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

ORGANIZATIONAL CONFLICT OF INTEREST CERTIFICATION (APR 1984)

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

(End of provision)

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

1552.209–73 Notification of conflicts of interest regarding personnel.

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

NOTIFICATION OF CONFLICTS OF INTEREST REGARDING PERSONNEL (MAY 1994)

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

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

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

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

(End of clause)

[59 FR 18620, Apr. 19, 1994]

1552.209–74 Limitation of future contracting.

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

LIMITATION OF FUTURE CONTRACTING (RAC) (APR 2004)

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

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

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

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

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

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

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

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

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

(End of clause)

LIMITATION OF FUTURE CONTRACTING ALTERNATE I (ERRS) (APR 2004)

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

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements

of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

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

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

(1) It will not provide any Superfund Technical Assistance and Removal Team (START); type activities (e.g., START contracts) to EPA within the Contractor's ERRS assigned geographical area(s), either as a prime contractor, subcontractor, or consultant.

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

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

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

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

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

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

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

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

(End of clause)

LIMITATION OF FUTURE CONTRACTING ALTERNATE II (START) (APR 2004)

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

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required

to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

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

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

(1) It will not provide to EPA cleanup services (e.g., Emergency and Rapid Response Services (ERRS) contracts) within the Contractor's START assigned geographical area(s), either as a prime Contractor, subcontractor, or consultant.

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

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

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

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

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

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

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

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

(End of clause)

LIMITATION OF FUTURE CONTRACTING ALTERNATE III (ESAT) (APR 2004)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this

clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

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

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

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

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

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

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

(End of clause)

LIMITATION OF FUTURE CONTRACTING, ALTERNATE IV (ESS) (SEP 2013)

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

LIMITATION OF FUTURE CONTRACTING, ALTERNATE V (HEADQUARTERS SUPPORT) (APR 2004)

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

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

(c) The Contractor, during the life of this contract, will be ineligible to enter into a contract with EPA to perform response action work (e.g., Response Action Contract (RAC), Emergency and Rapid Response Services (ERRS), Superfund Technical Assistance and Removal Team (START), and Enforcement Support Services (ESS) contracts), unless otherwise authorized by the Contracting Officer.

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

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

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

request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

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

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

(End of clause)

LIMITATION OF FUTURE CONTRACTING; ALTERNATE VI (SITE SPECIFIC) (APR 2004)

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

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

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

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

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

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

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

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

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

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

(i) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this

paragraph (i) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

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

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

(End of clause)

[59 FR 18620, Apr. 19, 1994, as amended at 62 FR 5348, Feb. 5, 1997; 63 FR 692, Jan. 7, 1998; 65 FR 37292, June 14, 2000; 70 FR 61570, Oct. 25, 2005; 78 FR 46290, July 31, 2013]

1552.209–75 Annual certification.

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

ANNUAL CERTIFICATION (MAY 1994)

The Contractor shall submit an annual conflict of interest certification to the Contracting Officer. In this certification, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual or potential organizational conflicts of interest have been reported to EPA. In addition, in this annual certification, the Contractor shall certify that it has informed its personnel who perform work under EPA contracts or relating to EPA contracts of their obligation to report personal and organizational conflicts of interest to the Contractor. Such certification must be signed by a senior executive of the company and submitted in accordance with instructions provided by the Contracting Officer. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter, until expiration or termination of the contract. The certification must be received by the Contracting Officer no later than 45 days after the close of the certification period covered.

(End of clause)

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

1552.210–71 [Reserved]

1552.210–73—1552.210–74 [Reserved]

1552.211–70 Reports of work.

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

REPORTS OF WORK (OCT 2000)

The Contractor shall prepare and deliver reports, including plans, evaluations, studies, analyses and manuals in accordance with Attachment _____. Each report shall cite the contract number, identify the U.S. Environmental Protection Agency as the sponsoring agency, and identify the name of the Contractor preparing the report.

The OMB clearance number for progress reports delivered under this contract is 2030–0005.

(End of clause)

Alterate I (OCT 2000). The Contractor shall prepare and deliver the below listed reports, including plans, evaluations, studies, analyses and manuals to the designated addressees. Each report shall cite the contract number, identify the U.S. Environmental Protection Agency as the sponsoring agency, and identify the name of the Contractor preparing the report.

The OMB clearance number for progress reports delivered under this contract is 2030–0005. Required reports are:

Reports description	No. copies	Addressees
.....	.....	.....
.....	.....	.....
.....	.....	.....

(End of clause)

[49 FR 8867, Mar. 8, 1984. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997; 63 FR 10549, Mar. 4, 1998; 63 FR 46899, Sept. 3, 1998; 65 FR 58924, Oct. 3, 2000; 66 FR 28674, May 24, 2001; 78 FR 46290, July 31, 2013]

1552.211–72 Monthly progress report.

As prescribed in 1511.011–72, insert the following clause:

MONTHLY PROGRESS REPORT (JUN 1996)

(a) The Contractor shall furnish ____ copies of the combined monthly technical and financial progress report stating the progress made, including the percentage of the project completed, and a description of the work accomplished to support the cost. If the work is ordered using work assignments or delivery orders, include the estimated percentage of task completed during the reporting period for each work assignment or delivery order.

(b) Specific discussions shall include difficulties encountered and remedial action taken during the reporting period, and anticipated activity with a schedule of deliverables for the subsequent reporting period.

(c) The Contractor shall provide a list of outstanding actions awaiting Contracting Officer authorization, noted with the corresponding work assignment, such as subcontractor/consultant consents, overtime approvals, and work plan approvals.

(d) The report shall specify financial status at the contract level as follows:

(1) For the current reporting period, display the amount claimed.

(2) For the cumulative period and the cumulative contract life display: the amount obligated, amount originally invoiced, amount paid, amount suspended, amount disallowed, and remaining approved amount. The remaining approved amount is defined as the total obligated amount, less the total amount originally invoiced, plus total amount disallowed.

(3) Labor hours.

(i) A list of employees, their labor categories, and the numbers of hours worked for the reporting period.

(ii) For the current reporting period, display the expended direct labor hours and costs broken out by EPA contract labor hour category for the prime contractor and each subcontractor and consultant.

(iii) For the cumulative contract period and the cumulative contract life display: the negotiated, expended and remaining direct labor hours and costs broken out by EPA contract labor hour category for the prime contractor, and each subcontractor and consultant.

(iv) Display the estimated direct labor hours and costs to be expended during the next reporting period.

(4) Display the current dollar ceilings in the contract, net amount invoiced, and remaining amounts for the following categories: Direct labor hours, total estimated cost, award fee pool (if applicable), subcontracts by individual subcontractor, travel, program management, and Other Direct Costs (ODCs).

(5) Unbilled allowable costs. Display the total costs incurred but unbilled for the current reporting period and cumulative for the contract.

(6) Average cost of direct labor. Compare the actual average cost per hour to date with the average cost per hour of the approved work plans for the current contract period.

(e) The report shall specify financial status at the work assignment or delivery order level as follows:

(1) For the current period, display the amount claimed.

(2) For the cumulative period display: amount shown on workplan, or latest work assignment/delivery order amendment amount (whichever is later); amount currently claimed; amount paid; amount suspended; amount disallowed; and remaining approved amount. The remaining approved amount is defined as: the workplan amount or latest work assignment or delivery order amount (whichever is later), less total amounts originally invoiced, plus total amount disallowed.

(3) Labor hours.

(i) A list of employees, their labor categories, and the number of hours worked for the reporting period.

(ii) For the current reporting period, display the expended direct labor hours and costs broken out by EPA contract labor hour category for the prime contractor and each subcontractor and consultant.

(iii) For the current reporting period, cumulative contract period, and the cumulative contract life display: the negotiated, expended and remaining direct labor hours and costs broken out by EPA contract labor hour category for the prime contractor and each subcontractor and consultant.

(iv) Display the estimated direct labor hours and costs to be expended during the next reporting period.

(v) Display the estimates of remaining direct labor hours and costs required to complete the work assignment or delivery order.

(4) Unbilled allowable costs. Display the total costs incurred but unbilled for the current reporting period and cumulative for the work assignment.

(5) Average cost of direct labor. Display the actual average cost per hour with the cost per hour estimated in the workplan.

(6) A list of deliverables for each work assignment or delivery order during the reporting period.

(f) This submission does not change the notification requirements of the ''Limitation of Cost'' or ''Limitation of Funds'' clauses requiring separate written notice to the Contracting Officer.

(g) The reports shall be submitted to the following addresses on or before the ____ of each month following the first complete reporting period of the contract. See EPAAR 1552.232–70, Submission of Invoices, paragraph (e), for details on the timing of submittals. Distribute reports as follows:

No. of copies	Addressee	Address (email and/or shipping)
.....	Contracting Officer's Representative.	
.....	Contracting Officer.	

(End of clause)

[61 FR 29317, June 10, 1996. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997; 78 FR 46290, July 31, 2013]

1552.211–73 Level of effort—cost-reimbursement term contract.

As prescribed in 1511.011–73, insert the following contract clause in cost-reimbursement term contracts including cost contracts without fee, cost-sharing contracts, cost-plus-fixed-fee (CPFF) contracts, cost-plus-incentive-fee contracts (CPIF), and cost-plus-award-fee contracts (CPAF).

LEVEL OF EFFORT—COST-REIMBURSEMENT TERM CONTRACT (APR 1984)

(a) The Contractor shall perform all work and provide all required reports within the level of effort specified below. The Government hereby orders ____ direct labor hours for the base period, which represents the Government's best estimate of the level of effort to fulfill these requirements.

(b) Direct labor includes personnel such as engineers, scientists, draftsmen, technicians, statisticians, and programmers and not support personnel such as company management, typists, and key punch operators even though such support personnel are normally treated as direct labor by the Contractor. The level of effort specified in paragraph (a) includes Contractor, subcontractor, and consultant labor hours.

(c) If the Contractor provides less than 90 percent of the level of effort specified for the base period or any optional period ordered, an equitable downward adjustment of the fixed fee, if any, for that period will be made. The Government may require the Contractor to provide additional effort up to 110 percent of the level of effort for any period until the estimated cost for that period has been reached. However, this additional effort shall not result in any increase in the fixed fee, if any. If this is a cost-plus-incentive-fee (CPIF) contract, the term ''fee'' in this paragraph means ''base fee and incentive fee.'' If this is a cost-plus-award-fee (CPAF) contract, the term ''fee'' in this paragraph means ''base fee and award fee.''

(d) If the level of effort specified to be ordered during a given base or option period is not ordered during that period, that level of effort may not be acumulated and ordered during a subsequent period.

(e) These terms and conditions do not supersede the requirements of either the ''Limitation of Cost'' or ''Limitation of Funds'' clauses.

(End of clause)

[49 FR 8867, Mar. 8, 1984. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211–74 Work assignments.

As prescribed in 1511.011–74, insert the following contract clause in cost-reimbursement type term form contracts when work assignments are to be used.

WORK ASSIGNMENTS (APR 1984)

(a) The contractor shall perform work under this contract as specified in written work assignments issued by the Contracting Officer.

(b) Each work assignment will include (1) a numerical designation, (2) the estimate of required labor hours, (3) the period of performance and schedule of deliverables, and (4) the description of the work.

(c) The Contractor shall acknowledge receipt of each work assignment by returning to the Contracting Officer a signed copy of the work assignment within ____ calendar days after its receipt. The Contractor shall begin work immediately upon receipt of a work assignment. Within ____ calendar days after receipt of a work assignment, the Contractor shall submit ____ copies of a work plan to the Contracting Officer's Representative and ____ copies to the Contracting Officer. The work plan shall include a detailed technical and staffing plan and a detailed cost estimate. Within ____ calendar days

after receipt of the work plan, the Contracting Officer will provide written approval or disapproval of it to the Contractor. If the Contractor has not received approval on a work plan within ____ calendar days after its submission, the Contractor shall stop work on that work assignment. Also, if the Contracting Officer disapproves a work plan, the Contractor shall stop work until the problem causing the disapproval is resolved. In either case, the Contractor shall resume work only when the Contracting Officer finally approves the work plan.

(d) This clause does not change the requirements of the ''Level of Effort'' clause, nor the notification requirements of either the ''Limitation of Cost'' or ''Limitation of Funds'' clauses.

(e) Work assignments shall not allow for any change to the terms or conditions of the contract. Where any language in the work assignment may suggest a change to the terms or conditions, the Contractor shall immediately notify the Contracting Officer.

(End of clause)

Alterate I. As prescribed in 1512.104(b), modify the existing clause by adding the following paragraph (f) to the basic clause:

(f) Within 20 days of receipt of the work assignment or similar tasking document, the Contractor shall provide a conflict of interest certification. Where work assignments or similar tasking documents are issued under this contract for work on or directly related to a site, the Contractor is only required to provide a conflict of interest certification for the first work assignment issued for that site. For all subsequent work on that site under this contract, the Contractor has a continuing obligation to search and report any actual or potential conflicts of interest, but no additional conflict of interest certifications are required.

Before submitting the conflict of interest certification, the contractor shall search its records accumulated, at a minimum, over the past three years immediately prior to the receipt of the work assignment or similar tasking document. In the COI certification, the Contractor must certify to the best of the Contractor's knowledge and belief, that all actual or potential organizational conflicts of interest have been reported to the Contracting Officer or that to the best of the Contractor's knowledge and belief, no actual or potential organizational conflicts of interest exist. In addition, the Contractor must certify that its personnel who perform work under this work assignment or relating to this work assignment have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential conflicts of interest arising during performance of this work assignment or other work related to this site.

(End of clause)

Alternate II. As prescribed in 1512.104(b), modify the existing clause by adding the following paragraph (f) to the basic clause:

(f) Within 20 days of receipt of the work assignment or similar tasking document, the Contractor shall provide a conflict of interest certification. Where work assignments or similar tasking documents are issued under this contract for work on or directly related to a site, the Contractor is only required to provide a conflict of interest certification for the first work assignment issued for that site. For all subsequent work on that site under this contract, the Contractor has a continuing obligation to search and report any actual or potential conflicts of interest, but no additional conflict of interest certifications are required.

Before submitting the conflict of interest certification, the Contractor shall initially search through all of its available records to identify any actual or potential conflicts of interest. During the first three years of this contract, the Contractor shall search through all records created since the beginning of the contract plus the records of the Contractor prior to the award of the contract until a minimum of three years of records are accumulated. Once three years of records have accumulated, prior to certifying, the Contractor shall search its records accumulated, at a minimum, over the past three years immediately prior to the receipt of the work assignment or similar tasking document. In the certification, the Contractor must certify to the best of the Contractor's knowledge and belief, that all actual or potential organizational conflicts of interest have been reported to the Contracting Officer or that to the best of the Contractor's knowledge and belief, no actual or potential organizational conflicts of interest exist. In addition, the Contractor must certify that its personnel who perform work under this work assignment or relating to this work assignment have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential conflicts of interest arising during performance of this work assignment or other work related to this site.

(End of clause)

[49 FR 8867, Mar. 8, 1994, as amended at 59 FR 18624, Apr. 19, 1994. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997; 78 FR 46291, July 31, 2013]

1552.211–75 Working files.

As prescribed in 1511.011–75, insert the following clause in all applicable EPA contracts.

WORKING FILES (APR 1984)

The Contractor shall maintain accurate working files (by task or work assignment) on all work documentation including calculations, assumptions, interpretations of regulations, sources of information, and other raw data required in the performance of this contract. The Contractor shall provide the information contained in its working files upon request of the Contracting Officer.

(End of clause)

[49 FR 8867, Mar. 8, 1984. Redesignated at 55 FR 39622, Sept. 28, 1990, as amended at 21994, May 4, 1995. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211–76 Legal analysis.

As prescribed in 1511.011–76, insert this contract clause when it is determined that the contract involves legal analysis.

LEGAL ANALYSIS (APR 1984)

The Contractor shall furnish to the Contracting Officer's Representative one (1) copy of any draft legal analysis. The Government will provide a response to the Contractor within thirty (30) calendar days after receipt. The Contractor shall not finalize the analysis until the Government has given approval.

(End of clause)

[49 FR 8867, Mar. 8, 1984. Redesignated at 55 FR 39622, Sept. 28, 1990, as amended at 60 FR 21994, May 4, 1995. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997; 78 FR 46291, July 31, 2013]

1552.211–77 Final reports.

As prescribed in 1511.011–77, insert this contract clause when a contract requires both a draft and a final report.

FINAL REPORTS (SEP 2013)

(a) ''Draft Report''____The Contractor shall submit to the Contracting Officer's Representative ____ copies of the draft final report on or before _____ (date) ____ The Contractor shall furnish to the Contracting Officer a copy of the letter transmitting the draft. The draft shall be double-spaced or space-and-a-half and shall include all pertinent material required in the final report. The Government will review for approval or disapproval the draft and provide a response to the Contractor within ____ calendar days after receipt. If the Government does not provide a response within the allotted review time, the Contractor immediately shall notify the Contracting Officer in writing.

(b) ''Final Report''—The Contractor shall deliver a final report on or before the last day of the period of performance specified in the contract. Distribution is as follows:

No. of copies	Addressee	Address (email and/or shipping)
1	EPA Library.	
1	Contracting Officer.	
1	Contracting Officer's Representative.	

(End of clause)

[78 FR 46291, July 31, 2013]

1552.211–78 Management consulting services.

As prescribed in 1511.011–78, insert the following contract clause in all contracts for management consulting services.

MANAGEMENT CONSULTING SERVICES (APR 1985)

All reports containing recommendations to the Environmental Protection Agency shall include the following information on the cover of each report: (a) Name and business address of the contractor; (b) contract number; (c) contract dollar amount; (d) whether the contract was subject to full and open competition or a sole source acquisition; (e) name of the EPA Project Officer and the EPA Project Officer's office identification and location; and (f) date of report.

(End of clause)

[50 FR 14360, Apr. 11, 1985; 50 FR 15425, Apr. 18, 1985. Redesignated at 55 FR 39622, Sept. 28, 1990, as amended at 60 FR 21994, May 4, 1995. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211–79 Compliance with EPA policies for information resources management.

As prescribed in 1511.011–79, insert the following clause:

COMPLIANCE WITH EPA POLICIES FOR INFORMATION RESOURCES MANAGEMENT

(a) *Definition*. Information Resources Management (IRM) is defined as any planning, budgeting, organizing, directing, training, promoting, controlling, and managing activities associated with the burden, collection, creation, use and dissemination of information. IRM includes both information itself and the management of information and related resources such as personnel, equipment, funds, and technology. Examples of these services include but are not limited to the following:

(1) The acquisition, creation, or modification of a computer program or automated data base for delivery to EPA or use by EPA or contractors operating EPA programs.

(2) The analysis of requirements for, study of the feasibility of, evaluation of alternatives for, or design and development of a computer program or automated data base for use by EPA or contractors operating EPA programs.

(3) Services that provide EPA personnel access to or use of computer or word processing equipment, software, or related services.

(4) Services that provide EPA personnel access to or use of: Data communications; electronic messaging services or capabilities; electronic bulletin boards, or other forms of electronic information dissemination; electronic record-keeping; or any other automated information services.

(b) *General*. The Contractor shall perform any IRM-related work under this contract in accordance with the IRM policies, standards, and procedures set forth on the Office of Environmental Information policy Web site. Upon receipt of a work request (*i.e.* delivery order, task order, or work assignment), the Contractor shall check this listing of directives. The applicable directives for performance of the work request are those in effect on the date of issuance of the work request. The 2100 Series (2100–2199) of the Agency's Directive System contains the majority of the Agency's IRM policies, standards, and procedures.

(c) *Section 508 requirements (accessibility)*. Contract deliverables are required to be compliant with Section 508 requirements (accessibility for people with disabilities). The Environmental Protection Agency policy for 508 compliance can be found at *www.epa.gov/accessibility*.

(d) *Electronic access*. A complete listing, including full text, of documents included in the 2100 Series of the Agency's Directive System is maintained on the EPA Public Access Server on the Internet at *http://epa.gov/docs/irmpoli8/policies/index.html*.

(End of clause)

[77 FR 429, Jan. 5, 2012, as amended at 78 FR 46291, July 31, 2013]

1552.213–70 Notice to suppliers of equipment.

As prescribed in 1513.507(b), the Contracting Officer shall insert the following contract clause in orders for or lease of commercially available equipment.

NOTICE TO SUPPLIERS OF EQUIPMENT (APR 1984)

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

(b) Performance in accordance with the terms and conditions of the vendor's commercial lease, or customer service maintenance agreement, unless specified in the Schedule, may render the vendor's performance unacceptable, thereby permitting the Government to apply such contractual remedies as may be permitted by law, regulation, or the terms of this order.

(End of clause)

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1552.214–71 Contract award—other factors—formal advertising.

As prescribed in 1514.201–6(b), insert the following solicitation provision in invitations for bids (IFB) when it is appropriate to describe other factors that will be used in evaluating bids for award. This provision is used to describe the other factors mentioned in the solicitation provisions ''Contract Award—Formal Advertising'' (FAR 52.214–10), and ''Contract Award—Construction'' (FAR 52.214–19). All other evaluation provisions in the IFB (e.g., evaluation of options) should be cross-referenced in this provision. The other

factors set forth in the provision should represent a consolidated statement of the exact basis upon which bids will be evaluated for award.

CONTRACT AWARD—OTHER FACTORS—FORMAL ADVERTISING (APR 1984)

The Government will award a contract resulting from this solicitation as stated in the ''Contract Award'' provision. The other factors that will be considered are:

(End of provision)

1552.215–70 EPA source evaluation and selection procedures—negotiated procurements.

As prescribed in 1515.209(a), insert the following provision:

EPA SOURCE EVALUATION AND SELECTION PROCEDURES—NEGOTIATED PROCUREMENTS (AUG 1999)

(a) The Government will perform source selection in accordance with FAR part 15 and the EPA Source Evaluation and Selection Procedures in EPAAR part 1515 (48 CFR part 1515). The significant features of this procedure are:

(1) The Government will perform either cost analysis or price analysis of the offeror's cost/business proposal in accordance with FAR parts 15 and 31, as appropriate. In addition, the Government will also evaluate proposals to determine contract cost or price realism.

Cost or price realism relates to an offeror's demonstrating that the proposed cost or price provides an adequate reflection of the offeror's understanding of the requirements of this solicitation, i.e., that the cost or price is not unrealistically low or unreasonably high.

(2) The Government will evaluate technical proposals as specified in 1552.215–71, Evaluation Factors for Award.

(b) In addition to evaluation of the previously discussed elements, the Government will consider in any award decision the responsibility factors set forth in FAR Part 9.

(End of provision)

[61 FR 47067, Sept. 6, 1996, as amended at 61 FR 57339, Nov. 6, 1996; 64 FR 47415, Aug. 31, 1999]

1552.215–71 Evaluation factors for award.

As prescribed in 1515.209(a), insert one of the following provisions.

EVALUATION FACTORS FOR AWARD (AUG 1999)

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government cost or other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are significantly more important than cost or price.

(b) Evaluation factors and significant subfactors to determine quality of product or service:

(End of provision)

EVALUATION FACTORS FOR AWARD (AUG 1999)—ALTERNATE I (AUG 2000)

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government cost or other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are significantly less important than cost or price.

(b) Evaluation factors and significant subfactors to determine quality of product or service:

(End of provision)

EVALUATION FACTORS FOR AWARD (AUG 1999)—ALTERNATE II (AUG 2000)

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government cost or other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are approximately equal to cost or price.

(b) Evaluation factors and significant subfactors to determine the quality of product or service:

(End of provision)

EVALUATION FACTORS FOR AWARD (AUG 1999)—ALTERNATE III (AUG 2000)

(a) The Government will make award to the offeror with the lowest-evaluated cost or price, whose proposal meets or exceeds the acceptability standards for non-cost factors. In the event that there are two or more technically acceptable, equal price (cost) offers, the Government will consider socioeconomic, environmental and other similar

factors, as listed below in descending order of importance:

(b) Factors and significant subfactors for technical acceptability evaluation:

(c) Factors for past performance evaluation (optional):

(End of provision)

[64 FR 47415, Aug. 31, 1999]

1552.215–72 Instructions for the Preparation of Proposals.

As prescribed in 1515.408(a)(1) insert the following provision:

INSTRUCTIONS FOR THE PREPARATION OF PROPOSALS (AUG 1999)

(a) *Other than cost proposal instructions.* (1) Submit proposal for than cost factors as a separate part of the total proposal package. Omit all cost or pricing details from this proposal.

(2) Special proposal instructions:

(b) *Cost or pricing proposal instructions.* The offeror shall prepare and submit cost or pricing information data and supporting attachments in accordance with Table 15–2 of FAR 15.408. In addition to a hard copy of the information, to expedite review of the proposal, submit an IBM-compatible software or storage device (e.g., USB flash drive or card reader) containing the financial data required, if this information is available using a commercial spreadsheet program on a personal computer. Submit this information using Microsoft Exchange 365, if available. Identify which version of Microsoft Exchange used. If the offeror used another spreadsheet program, indicate the software program used to create this information. Offerors should include the formulas and factors used in calculating the financial data. Although submission of a compatible software or device will expedite review, failure to submit a disk will not affect consideration of the proposal.

(1) General—Submit cost or pricing information prepared in accordance with FAR Table 15–2, Instructions for Submitting Cost/Price Proposals When Cost or Pricing Information Are Required and the following:

(i) Clearly identify separate cost or pricing information associated with any:

(A) Options to extend the term of the contract;

(B) Options for the Government to order incremental quantities; and/or

(C) Major tasks, if required by the special instructions.

(ii) If the contract schedule includes a ''Fixed Rate for Services'' clause, please provide in the cost proposal a schedule duplicating the format in the clause and include proposed fixed hourly rates per labor category for the base and any optional contract periods.

(iii) If the contract includes the clause at EPAAR 1552.232–73 ''Payments—Fixed-Rate Services Contract,'' or the clause at FAR 52.232–7, ''Payments Under Time and Materials and Labor-Hour Contracts,'' include in the cost proposal the estimated costs and burden rate to be applied to materials, other direct costs, or subcontracts. The Government will include these costs as part of its cost proposal evaluation.

(iv) If other divisions, subsidiaries, a parent or affiliated companies will perform work, provide the name and location of such affiliate and offeror's intercompany pricing policy. Separately identify costs and supporting data for each entity proposed.

(v) The realism of costs, including personnel compensation rates (including effective hourly rates due to uncompensated overtime) will be part of the proposal evaluation. Any reductions to proposed costs or differences between proposed and known EPA/DCAA recommended rates must be fully explained. If an offeror makes a reduction which makes its offer or portions of its offer below anticipated costs, the offeror shall identify where (i.e., which elements of costs) the proposed reductions will be made. Unsubstantiated rates may result in an upward or downward adjustment of the cost proposals to reflect more realistic costs. Based on this analysis, a projected cost for the offeror will be calculated to reflect the Government's estimate of the offeror's probable costs. Any inconsistency, whether real or apparent, between the promised performance and cost or price should be explained. The burden of proof for cost credibility rests with the offeror.

(2) *Direct labor.* (i) The direct technical labor hours (level-of-effort) appearing in the solicitation are for professional and technical labor only. These hours do not include management at a level higher than project management, e.g., corporate and day-to-day management, nor do they include clerical and support staff at a level lower than technician. If it is the offeror's normal practice to charge these types of costs as direct costs, include these costs along with an estimate of the directly chargeable labor-hours for these personnel. These direct charges are to be shown separately from the technical (level-

of-effort) effort. If this type of effort is normally included in the offeror's indirect cost allocations, no estimate is required. However, direct charging of these on any resulting contract will not be allowed. Additionally the direct technical labor hours are the workable hours required by the Government and do not include release time (i.e., holidays, vacation, etc.) Submit the proposal utilizing the labor categories and distribution of the level-of-effort specified in the solicitation. These are approximate distribution levels and do not necessarily represent the actual levels which may be experienced during contract performance.

(ii) Explain the basis of the proposed labor rates, including a complete justification for all judgmental factors used to develop weights applied to company's category or individual rates that comprise the rates for labor categories specified in the solicitation. This explanation should describe how technical approach coincides with the proposed costs. If the proposed direct labor rates are based on an average of the individuals proposed to work on the contract, provide a list of the individuals proposed and the hours associated with each individual in deriving the rates. If the proposed direct labor rates are based on an average of company category rates, identify and describe the labor categories and the percentages associated with each category in deriving the rates, explaining in detail the basis for the percentages assigned.

(iii) Describe for each labor category proposed, the company's qualifications and experience requirements. If individual rates are used, provide the employee's name. If specific individuals are identified in the technical proposal, correlate these individuals with the labor categories specified in the solicitation.

(iv) Provide a matrix summarizing the effort proposed, including the subcontracts, by professional and technical level specified in the solicitation.

(v) Indicate whether current rates or escalated rates are used. If escalation is included, state the degree (percent) and methodology. The methodology shall include the effective date of the base rates and the policy on salary reviews (e.g. anniversary date of employee or salary reviews for all employees on a specific date).

(vi) State whether any additional direct labor (new hire or temporary hires) will be required during the performance period of this acquisition. If so, state the number required, the professional or technical level and the methodology used to estimate proposed labor rates.

(vii) With respect to educational institutions, include the following information for those professional staff members whose salary is expected to be covered by a stipulated salary support agreement pursuant to OMB Circular A–21.

(A) Individual's name;

(B) Annual salary and the period for which the salary is applicable;

(C) List of other research Projects or proposals for which salaries are allocated, and the proportionate time charged to each; and

(D) Other duties, such as teaching assignments, administrative assignments, and other institutional activities. Show the proportionate time charged to each. (Show proportionate time charges as a percentage of 100% of time for the entire academic year, exclusive of vacation or sabbatical leave.)

(viii) Uncompensated overtime. The decision to propose uncompensated overtime is the offeror's decision. Should the offeror, however, elect to propose uncompensated overtime, the offeror must propose a methodology that is consistent with their cost accounting practices and company policy. If proposed, provide an estimate of any uncompensated overtime proposed for exempt personnel working at the offeror's facilities. This estimate should identify the number of uncompensated labor hours and the percentage of compensated labor. Uncompensated labor hours are defined as hours for exempt personnel in excess of regular hours for a pay period which are actually worked and recorded in accordance with company policy. Provide a copy of the company policy on uncompensated overtime. Provide historical percentages of uncompensated overtime for the past three years. If proposed for subcontractors, provide separately with subcontractor information.

(ix) For labor rate contracts, for each fixed labor rate, offerors shall identify the basis for the loaded fixed hourly rate for each contract period for example, the rate might consist of the following cost elements: raw wage or salary rate, plus fringe benefits (if applicable), plus overhead rate (if applicable), plus G&A expense rate (if applicable), plus profit.

When determining the composite raw wage for a labor category, the offeror shall:

(A) provide in narrative form the basis for the raw wage for each labor category. If actual wages of current employees are used, the basis for the projections should be explained.

(B) If employees are subject to the Service Contract Act or Davis Bacon Act, they must be compensated at least at the minimum wage rate required by the applicable Wage Determination.

(3) *Indirect costs (fringe, overhead, general, and administrative expenses).* (i) If the rates have been recently approved, include a copy of the rate agreement. If the agreement does not cover the projected performance period of the proposed effort, provide the rationale and any estimated rate calculations for the proposed performance period.

(ii) Submit supporting documentation for rates which have not been approved or audited. Indicate whether computations are based upon historical or projected data.

(iii) Provide actual pool expenses, base dollars, or hours (as applicable for the past five years). Include the actual indirect rates for the past five years including the indirect rates proposed, the actual indirect rates experienced and, if available, the final negotiated rate. Indicate the amount of unallowable costs included in the historical data.

(iv) Offerors who propose indirect rates for new or substantially reorganized cost centers should consider offering to accept ceilings on the indirect rates at the proposed rates. Similarly, offerors whose subcontractors propose indirect rates for new or substantially reorganized cost centers should likewise consider offering to accept ceilings on the subcontractors' indirect rates at the proposed rates.

NOTE TO PARAGRAPH (b)(3)(iv): The Government reserves the right to adjust an offeror's or its subcontractor's estimated indirect costs for evaluation purposes based on the Agency's judgment of the most probable costs up to the amount of any stated ceiling.

(v) If the employees are subject to the Service Contract Act or Davis Bacon Act, employees must receive the minimum level of benefits stated in the applicable Wage Determination.

(4) *Travel expense.* (i) If the solicitation specifies the amount of travel costs, this amount is exclusive of any applicable indirect costs and fee.

(ii) If the solicitation does not specify the amount of travel costs, attach a schedule illustrating how travel was computed. Include a breakdown indicating number of trips, number of travelers, destinations from and to, purpose and cost, e.g., mileage, transportation costs, subsistence rates.

(5) *Equipment, facilities and special equipment, including tooling.* (i) If direct charges for use of existing contractor equipment are proposed, provide a description of these items, including estimated usage hours, rates, and total costs.

(ii) If equipment purchases are proposed, provide a description of these items, and a justification as to why the Government should furnish the equipment or allow its purchase with contract funds. (Unless specified elsewhere in this solicitation, FAR 45.302–1 requires contractors to furnish all facilities in performance of contracts with certain limited exceptions.)

(iii) Identify Government-owned property in the possession of the offeror or proposed to be used in the performance of the contract, and the Government agency which has cognizance over the property.

(iv) Submit proposed rates or use charges for equipment, along with documentation to support those rates.

(v) If special purposes facilities or equipment are being proposed, provide a description of these items, details for the proposed costs including competitive prices, and justification as to why the Government should furnish the equipment or allow its purchase with contract funds.

(vi) If fabrication by the prime contractor is contemplated, include details of material, labor, and overhead.

(6) *Other Direct Costs (ODC).* (i) If the solicitation specifies the amount of other direct costs, this amount is exclusive of any applicable indirect cost and fee.

(ii) If the amount is not specified in the solicitation, attach a schedule detailing how other direct costs were computed. Identify the major ODC items that under the accounting system would be a direct charge on any resulting contract.

(iii) If any of the cost elements identified as part of the specified other direct costs are recovered as an indirect cost, in accordance with the offeror's accounting system, those costs should not be included as a direct cost. Complete explanation of this adjustment and the contractor's practice should be provided.

(iv) Provide historical other direct costs dollars per level of effort hour on similar contracts or work assignments.

(7) *Team subcontracts.* When the cost of a subcontract is substantial (5 percent of the total estimated contract dollar value or $100,000, whichever is less), the offeror shall include the following subcontractor information:

(i) Provide details of subcontract costs in the same format as the prime contractor's costs. This detailed information may be provided separately to the EPA if the subcontractor does not wish to provide this data to the prime contractor. Cost data provided separately by a contractor must be received by the time, date and at the location specified for the receipt of proposals. The subcontractor's package should be clearly marked with the RFP number, the name of the prime offeror, and a statement that the package is subcontractor data relevant to the proposal from the prime offeror. If submitted with the prime contractor's proposal, identify the subcontractors. State the amount of service estimated to be required and the quoted daily or hourly rate. Offerors are encouraged to provide letters of intent, signed by subcontractors, agreeing to a specified rate for life of the contract. Include a cost or price analysis of the subcontractor cost showing the reasons why the costs are considered reasonable;

(ii) Describe how the prospective team subcontractors were chosen as part of the offeror's proposed team; and rationale for selection;

(iii) Describe the necessity for the subcontractor's effort as either a supplement or complement to the offeror's in-house expertise;

(iv) Identify the areas of the scope of work and the level of effort the subcontractors are anticipated to perform. Provide a reconciliation summary of the proposed hours and ODCs for the prime contractor and proposed subcontractor(s).

(v) Describe the prime contractor's management structure and internal controls to ensure efficient and quality performance of team subcontractors.

(8) *Facilities Capital Cost of Money (FCCM).* When an offeror elects to claim FCCM as an allowable cost, the offeror must submit Form CASB-CNF and show calculation of the proposed amount. FCCM will be an allowable cost under the contemplated contract, if the criteria for allowability at FAR 31.205–10(a)(2) are met.

(End of provision)

Alterate I (AUG 1999). If the Government's requirement is a fully dedicated staff person for a twelve month period(s) for each specified position and performance is on a Government facility, add the following paragraph (b)(2)(x) to the basic provision:

(x) The level of effort for each position is to be proposed in work years. A work year is considered to consist of 2080 hours inclusive of direct and indirect time (40 hours per week × 52 weeks per year = 2080 hours). The proposal must identify proposed work years and clearly identify how many hours in each work year are direct (i.e., productive working hours) and how many are indirect (i.e., paid absences). If the company policy includes a different base work week, the total available hours would be different. For example, if the company's policy calls for a 37.5 hour work week, offeror would deduct paid absences from 1950 hour (37.5 hours/week × 52 weeks/year = 1950 hours). Offeror should clearly identify the paid absences as to how many hours are for holiday and how many hours are for vacation and sick leave. The amount of indirect time (paid absences) identified in the proposal must be consistent with company policy and must allow for the ten Federal government holidays.

Alternate II (AUG 1999). If the Government's requirement is a fully dedicated staff person for a twelve month period(s) for each specified position and performance is not on a Government facility; add the following paragraph (b)(2)(x) to the basic provision:

(x) The level of effort for each position is to be proposed in work years. A work year is considered to consist of 2080 hours inclusive of direct and indirect time (40 hours per week × 52 weeks per year = 2080 hours). The proposal must identify proposed work years and clearly identify how many hours in each work year are direct (i.e., productive working hours) and how many are indirect (i.e., paid absences). If the company policy includes a different base work week, the total available hours would be different. For example, if the company's policy calls for a 37.5 hour work week, offeror would deduct paid absences from 1950 hour (37.5 hours/week × 52 weeks/year = 1950 hours). Offeror should clearly identify the paid absences as to how many hours are for holiday and how many hours are for vacation and sick leave.

Alternate III (AUG 1999). If the requirement is for the acquisition of supplies or equipment, substitute the following paragraphs (a)(iv)–(viii) and add (a)(ix) and (b).

(iv) Provide information as to how the proposed supplies or equipment meet the salient characteristics required by the contract line item;

(v) Provide published brochures, catalogs, or other technical literature by contract line item;

(vi) Meet any interface or compatibility requirements by contract line item;

(vii) Describe warranty services and how delivered by contract line item;

(viii) Assumptions, deviations and exceptions (as necessary); and

(ix) Additional information.

(b) Supplies—Provide unit pricing by contract line items for:

(i) each line item;

(ii) delivery;

(iii) installation;

(iv) sets of operating manuals;

(v) training;

(vi) warranty;

(vii) maintenance; and

(viii) volume discounts.

[64 FR 47415, Aug. 31, 1999, as amended at 78 FR 46291, July 31, 2013]

1552.215–73 General financial and organizational information.

As prescribed in 1515.408(a)(2), insert the following provision:

GENERAL FINANCIAL AND ORGANIZATIONAL INFORMATION: (AUG 1999)

Offerors or quoters are requested to provide information regarding the following items in sufficient detail to allow a full and complete business evaluation. If the question indicated is not applicable or the answer is none, it should be annotated. If the offeror

has previously submitted the information, it should certify the validity of that data currently on file at EPA and to whom and where it was submitted or update all outdated information on file.

(a) Contractor's Name: _____

(b) Address (If financial records are maintained at some other location, show the address of the place where the records are kept):

_____

_____

(c) Telephone Number: _____

(d) Individual(s) to contact re. this proposal: _____

_____

(e) Cognizant Government:

Audit Agency: _____

Address: _____

Auditor: _____

(f)(1) Work Distribution for the Last Completed Fiscal Accounting Period:

Sales:

Government cost-reimbursement type prime contracts and subcontracts	$_____
Government fixed-price prime contracts and subcontracts	$_____
Commercial Sales	$_____
Total Sales	$_____

(2) Total Sales for first and second fiscal years immediately preceding last completed fiscal year.

Total Sales for First Preceding Fiscal Year	$_____
Total Sales for Second Preceding Fiscal Year	$_____

(g) Is company a separate rate entity or division?.

Yes __

No —

If a division or subsidiary corporation, name parent company:

_____

(h) Date Company Organized: _____

(i) Manpower:

Total Employees: _____

Direct: _____

Indirect: _____

Standard Work Week (Hours): _____

(j) Commercial Products: _____

(k) Attach a current organizational chart of the company.

(l) Description of Contractor's system of estimating and accumulating costs under Government contracts. (Check appropriate blocks.)

	Estimated/ actual cost	Standard cost
Estimating System:		
Job Order	_____	_____
Process	_____	_____
Accumulating System:		
Job Order	_____	_____
Process	_____	_____

Has your cost estimating system been approved by any Government agency?

Yes __ No __

If yes, give name, date or approval, and location of agency:

_____

_____

Has your cost accumulation system been approved by any Government agency?

Yes __ No __

If yes, give name, date of approval, and address of agency:

_____

_____

(m) What is your fiscal year period? (Give month-to-month dates):

_____

_____

What were the indirect cost rates for your last completed fiscal year?

Fiscal year	Indirect cost rate	Basis of allocation
Fringe Benefits	_____	_____
Overhead	_____	_____
G&A Expense	_____	_____
Other	_____	_____

(n) Have the proposed indirect cost rate(s) been evaluated and accepted by any Government agency?

Yes __ No __

If yes, give name, date of approval, and location of the Government agency:

_____

Date of last preaward audit review by a Government agency:

_____

If the answer is no, data supporting the proposed rates must accompany the cost or price proposal. A breakdown of the items comprising overhead and G&A must be furnished.

(o) Cost estimating is performed by:

Accounting Department _____

Contracting Department _____

Other (describe) _____

(p) Has system of control of Government property been approved by a Government agency?

Yes __ No __

If yes, give name, date of approval, and location of the Government agency:

_____

_____

(q) Purchasing System: FAR 44.302 requires EPA, where it is the cognizant Government agency, to conduct a Contractor Purchasing System Review for each contractor whose sales to the Government, using other than sealed bid procedures, are expected to exceed $25 million (annual billings) during the next twelve months. The $25 million sales threshold is comprised of prime contracts, subcontractors under Government prime contracts, and modifications (except when the negotiated price is based on established catalog or market prices or is set by law or regulation).

Has your purchasing system been approved by a Government agency?
Yes __ No __

If yes, name and location of the Government agency:

_____

Period of Approval: _____

If no, do you estimate that your negotiated sales to the Government during the next twelve months will meet the $25 million threshold? Yes __ No __

If you responded yes to the $25 million threshold question, is EPA the cognizant agency for your organization based on the preponderance of Government contract dollars?
Yes __ No __

If EPA is not your cognizant Government agency, provide the name and location of the cognizant agency

_____

_____

Are your purchasing policies and procedures written?
Yes __ No __

(r) Does your firm have an established written incentive compensation or bonus plan?
Yes __ No __

(s) Additionally, offerors shall submit current financial statements, including a Balance Sheet, Statement of Income (Loss), and Cash Flow for the last two completed fiscal years. Specify resources available to perform the contract without assistance from any outside source. If sufficient resources are not available, indicate in proposal the amount required and the anticipated source (i.e., bank loans, letter or lines of credit, etc.).

(End of provision)

[64 FR 47417, Aug. 31, 1999]

1552.215–74 Advanced understanding—uncompensated time.

As prescribed in 1515.408(b), insert the following provision or one substantially the same as the following provision:

ADVANCED UNDERSTANDING—UNCOMPENSATED TIME (AUG 1999)

(a) The estimated cost of this contract is based upon the Contractor's proposal which specified that exempt personnel identified to work at the Contractor's facilities will provide uncompensated labor hours to the contract totaling ____ percent of compensated labor. (Note: the commitment for uncompensated time, and the formula elements in paragraph (b) below, apply only to exempt personnel working at the Contractor's facilities and does not include non-exempt personnel or exempt personnel working at other facilities.) Uncompensated labor hours are defined as hours of exempt personnel in excess of regular hours for a ____ pay period which are actually worked and recorded in accordance with the company policy, entitled, _____.

(b) Recognizing that the probable cost to the Government for the labor provided under this contract is calculated assuming a proposed level of uncompensated labor hours, it is hereby agreed that in the event the proposed level of uncompensated labor hours are not provided, an adjustment, calculated in accordance with the following formula will be made to the contract amount.

Formula:

Adjustment equals estimated value of uncompensated time hours not provided.

Target uncompensated time percent minus ____ percent.

Shortage of uncompensated time percent minus actual cost percent.

Estimated value of uncompensated time hours not provided equals shortage of uncompensated time percent times total exempt applicable direct labor costs (including applicable indirect costs).

(c) Within three weeks after the end of the contract, the Contractor shall submit a statement concerning the amount of uncompensated time hours delivered during the contract. In the event there is a shortage of uncompensated time hours provided, a calculation, utilizing the above formula will be made and this calculation will be the basis for an adjustment in the contract amount.

(d) In the event adjustments are made to the contract, the adjusted amounts shall not be allowable as a direct or indirect cost to this or any other Government contract.

(End of clause)

[64 FR 47418, Aug. 31, 1999]

1552.215–75 Past performance information.

As prescribed in 1515.209(c), insert the following clause:

PAST PERFORMANCE INFORMATION (OCT 2000)

(a) Offerors shall submit the information requested below as part of their proposal for both the offeror and any proposed subcontractors for subcontracts expected to exceed $ * . The information may be submitted prior to other parts of the proposal in order to assist the Government in reducing the evaluation period.

(b) Offerors shall submit a list of all or at least * contracts and subcontracts completed in the last * years, and all contracts and subcontracts currently in process, which are similar in nature to this requirement.

(1) The contracts and subcontracts listed may include those entered into with Federal, State and local governments, and commercial businesses, which are of similar scope, magnitude, relevance, and complexity to the requirement which is described in the RFP. Include the following information for each contract and subcontract listed:

(a) Name of contracting activity.

(b) Contract number.

(c) Contract title.

(d) Contract type.

(e) Brief description of contract or subcontract and relevance to this requirement.

(f) Total contract value.

(g) Period of performance.

(h) Contracting officer, telephone number, and E-mail address (if available).

(i) Program manager/project officer, telephone number, and E-mail address (if available).

(j) Administrative Contracting officer, if different from (h) above, telephone number, and E-mail address (if available).

(k) List of subcontractors (if applicable).

(l) Compliance with subcontracting plan goals for small disadvantaged business concerns, monetary targets for small disadvantaged business participation, and the notifications submitted under FAR 19.1202–4 (b), if applicable.

(c) Offerors should not provide general information on their performance on the identified contracts and subcontracts. General performance information will be obtained from the references.

(1) Offerors may provide information on problems encountered and corrective actions taken on the identified contracts and subcontracts.

(2) References that may be contacted by the Government include the contracting officer, program manager/project officer, or the administrative contracting officer identified above.

(3) If no response is received from a reference, the Government will make an attempt to contact another reference identified by the offeror, to contact a reference not identified by the offeror, or to complete the evaluation with those references who responded. The Government shall consider the information provided by the references, and may also consider information obtained from other sources, when evaluating an offeror's past performance.

(4) Attempts to obtain responses from references will generally not go beyond two telephonic messages and/or written requests from the Government, unless otherwise stated in the solicitation. The Government is not obligated to contact all of the references identified by the offeror.

(d) If negative feedback is received from an offeror's reference, the Government will compare the negative response to the responses from the offeror's other references to note differences. A score will be assigned appropriately to the offeror based on the information. The offeror will be given the opportunity to address adverse past performance information obtained from references on which the offeror has not had a previous opportunity to comment, if that information makes a difference in the Government's decision to include the offeror in or exclude the offeror from the competitive range. Any past performance deficiency or significant weakness will be discussed with offerors in the competitive range during discussions.

(e) Offerors must send Client Authorization Letters (see Section J of the solicitation) to each reference listed in their proposal to assist in the timely processing of the past performance evaluation. Offerors are encouraged to consolidate requests whenever possible (i.e., if the same reference has several contracts, send that reference a single notice citing all applicable contracts). Offerors may send Client Authorization Letters electronically to references with copies forwarded to the contracting officer.

(1) If an offeror has no relevant past performance history, an offeror must affirmatively state that it possesses no relevant past performance history.

(2) Client Authorization Letters should be mailed or E-mailed to individual references no later than five (5) working days after proposal submission. The offeror should forward a copy of the Client Authorization Letter to the contracting officer simultaneously with mailing to references.

(f) Each offeror may describe any quality awards or certifications that indicate the offeror possesses a high-quality process for developing and producing the product or service required. Such awards or certifications include, for example, the Malcolm Baldrige Quality Award, other Government quality awards, and private sector awards or certifications.

(1) Identify the segment of the company (one division or the entire company) which received the award or certification.

(2) Describe when the award or certification was bestowed. If the award or certification is over three years old, present evidence that the qualifications still apply.

(g) Past performance information will be used for both responsibility determinations and as an evaluation factor for award. The Past Performance Questionnaire identified in section J will be used to collect information on an offeror's performance under existing and prior contracts/subcontracts for products or services similar in scope, magnitude, relevance, and complexity to this requirement in order to evaluate offerors consistent with the past performance evaluation factor set forth in section M. References other than those identified by the offeror may be contacted by the Government and used in the evaluation of the offeror's past performance.

(h) Any information collected concerning an offeror's past performance will be maintained in the official contract file.

(i) In accordance with FAR 15.305 (a) (2) (iv), offerors with no relevant past performance history, or for whom information on past performance is not available, will be evaluated neither favorably nor unfavorably on past performance.

* Indicates that the contracting officer inserts applicable dollar figure and number.

(End of clause)

[65 FR 58925, Oct. 3, 2000]

1552.215–76 [Reserved]

1552.216–70 Award Fee.

As prescribed in 1516.405(a), insert the following clause:

AWARD FEE (MAY 2000)

(a) The Government shall pay the contractor a base fee, if any, and such additional fee as may be earned, as provided in the award fee plan incorporated into the Schedule.

(b) Award fee determinations made by the Government under this contract are unilaterally determined by the Fee Determination Official (FDO). The amount of the award fee to be paid is determined by the Government's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract. This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.

(c) The Government may unilaterally change the award fee plan at any time, via contract modification, at least thirty (30) calendar days prior to the beginning of the applicable evaluation period. Changes issued in a unilateral modification are not subject to equitable adjustments, consideration, or any other renegotiation of the contract.

(End of clause)

[60 FR 43404, Aug. 21, 1995, as amended at 65 FR 31500, May 18, 2000]

1552.216–71 Date of incurrence of cost.

At prescribed in 1516.307, insert the following contract clause in cost-reimbursement contracts when an anticipatory cost letter has been issued on the project. The beginning dates and the not-to-exceed amount to be inserted in the clause should be those in the anticipatory cost letter.

DATE OF INCURRENCE OF COST (APR 1984)

The Contractor is entitled to reimbursement for allowable, allocable costs incurred during the period of _____ to the award date of this contract in an amount not to exceed

$ _____

All terms and conditions of this contract are in effect from

_____

(End of clause)

1552.216–72 Ordering—by designated ordering officers.

As prescribed in 1516.505(a), insert the subject clause, or a clause substantially similar to the subject clause, in indefinite delivery/indefinite quantity type solicitations and contracts.

ORDERING—BY DESIGNATED ORDERING OFFICERS (____2014)

(a) The Government will order any supplies and services to be furnished under this contract by issuing task/delivery orders on Optional Form 347, or an agency prescribed form, from _____ through _____. In addition to the Contracting Officer, the following individuals are authorized ordering officers.

_____

_____

(b) A Standard Form 30 will be the method of amending task/delivery orders.

(c) The Contractor shall acknowledge receipt of each order by having an authorized company officer sign either a copy of a transmittal letter or signature block on page 3 of the task/delivery order, depending upon which is provided, within ____ calendar days of receipt.

(d) Prior to the placement of any task/delivery order, the Contractor will be provided with a proposed Performance Work Statement/Statement of Work and will be asked

to respond with detailed technical and cost proposals within ____ calendar days or less. The technical proposal will delineate the Contractor's interpretation for the execution of the PWS/SOW, and the pricing proposal will be the Contractor's best estimate for the hours, labor categories and all costs associated with the execution. The proposals are subject to negotiation. The Ordering Officer and the Contractor shall reach agreement on all the material terms of each order prior to the order being issued.

(e) Each task/delivery order issued will incorporate the Contractor's technical and cost proposals as negotiated with the Government, and will have a ceiling price which the contractor shall not exceed. When the Contractor has reason to believe that the labor payment and support costs for the order which will accrue in the next thirty (30) days will bring total cost to over 85 percent of the ceiling price specified in the order, the Contractor shall notify the Ordering Officer.

(f) Under no circumstances will the Contractor start work prior to the issue date of the task/delivery order unless specifically authorized to do so by the Ordering Officer. Any verbal authorization will be confirmed in writing by the Ordering Officer or Contracting Officer within ____ calendar days.

(End of clause)

Alternate I. As prescribed in 1516.505(a), insert the subject clause, or a clause substantially similar to the subject clause, in indefinite delivery/indefinite quantity contracts when formal input from the Contractor will not be obtained prior to order issuance.

(a) The Government will order any supplies and services to be furnished under this contract by issuing task/delivery orders on Optional Form 347, or any agency prescribed form, from ____ through ____. In addition to the Contracting Officer, the following individuals are authorized ordering officers:

_____

_____

(b) A Standard Form 30 will be the method of amending task/delivery orders.

(c) The Contractor shall acknowledge receipt of each order and shall prepare and forward to the Ordering Officer within ____ calendar days the proposed staffing plan for accomplishing the assigned task within the period specified.

(d) If the Contractor considers the estimated labor hours or specified work completion date to be unreasonable, the Contractor shall promptly notify the Ordering Officer and Contracting Officer in writing within ____ calendar days, stating why the estimated labor hours or specified completion date is considered unreasonable.

(e) Each task/delivery order will have a ceiling price, which the Contractor may not exceed. When the Contractor has reason to believe that the labor payment and support costs for the order, which will accrue in the next thirty (30) days, will bring total cost to over 85 percent of the ceiling price specified in the order, the Contractor shall notify the Ordering Officer.

(f) Paragraphs (c), (d), and (e) of this clause apply only when services are being ordered.

(End of clause)

[79 FR 37960, July 3, 2014]

1552.216–73 Fixed rates for services—indefinite delivery/indefinite quantity contract.

As prescribed in 1516.505(b), insert the following clause to specify fixed rates for services in indefinite delivery/indefinite quantity contracts. When the contract contains options, the clause should be modified to reflect the information and data for the base period and any option periods.

FIXED RATES FOR SERVICES—INDEFINITE DELIVERY/INDEFINITE QUANTITY CONTRACT (APR 1984)

The following fixed rates shall apply for payment purposes for the duration of the contact.

Personnel classification	Skill level	Estimated direct labor hours	Fixed hourly rate	Total
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

The rate, or rates, set forth above cover all expenses, including report preparation, salaries, overhead, general and administrative expenses, and profit.

The Contractor shall voucher for only the time of the personnel whose services are applied directly to the work called for in individual Delivery Orders and accepted by the EPA Project Officer. The Government shall pay the Contractor for the life of a delivery order at rates in effect when the delivery order was issued, even if performance under the delivery order crosses into another period. The Contractor shall maintain time and labor distribution records for all employees who work under the contract. These records must document time worked and work performed by each individual on all Delivery Orders.

(End of clause)

1552.216–74 Payment of fee.

As prescribed in 1516.307(b), insert the following clause:

PAYMENT OF FEE (MAY 1991)

(a) The term *fee* in this clause refers to either the fixed fee under a cost-plus-fixed-fee type contract, or the base fee under a cost-plus-award-fee type contract.

(b) The Government will make provisional fee payments on the basis of percentage of work completed. Percentage of work completed is the ratio of direct labor hours performed to the direct labor hours set forth in clause 1552.211–73, *Level of Effort—Cost-Reimbursement Term Contract.*

(End of clause)

[56 FR 43711, Sept. 4, 1991, as amended at 63 FR 46899, Sept. 3, 1998]

1552.216–75 Base fee and award fee proposal.

As prescribed in 1516.405(b), insert the following clause:

BASE FEE AND AWARD FEE PROPOSAL (FEB 1999)

For the purpose of this solicitation, offerors shall propose a combination of base fee and award fee. Base fee shall not exceed 3% of the estimated cost, excluding fee, and the award fee shall not be less than ____% of the total estimated cost, excluding fee. The combined percentages of base and award fee shall not exceed ____% of the total estimated cost, excluding fee.

(End of clause)

[64 FR 3876, Jan. 26, 1999]

1552.216–76 Estimated cost and cost-sharing.

As prescribed in 1516.307(c), insert the following clause:

ESTIMATED COST AND COST-SHARING (APR 1996)

(a) The total estimated cost of performing the work under this contract is $_____. The Contractor's share of this cost shall not exceed $_____. The Government's share of this cost shall not exceed $_____.

(b) For performance of the work under the contract, the Contractor shall be reimbursed for not more than ____ percent of the cost of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining balance of allowable cost shall constitute the Contractor's share.

(c) Fee shall not be paid to the prime contractor under this cost-sharing contract.

(d) The Contractor shall maintain records of all costs incurred and claimed for reimbursement as well as any other costs claimed as part of its cost share. Those records shall be subject to audit by the Government.

(e) Costs contributed by the Contractor shall not be charged to the Government under any other contract, grant or agreement (including allocation to other contracts as part of an independent research and development program) nor be included as contributions under any other Federal contract.

(End of clause)

[61 FR 14505, Apr. 2, 1996]

1552.216–77 Award term incentive.

As prescribed in 1515.406(c), insert a clause substantially the same as follows:

AWARD TERM INCENTIVE (FEB 2008)

(a) *General.* This contract may be extended as set forth in paragraph (b) based on overall contractor performance as evaluated in accordance with the Clause entitled ''Award Term Incentive Plan,'' provided the Agency has a need for the effort at or before the time an award term is to commence, and if the contractor receives notice of the availability of funding for an award term period pursuant to the ''Award Term Availability of Funds'' clause. The Contracting Officer is responsible for the overall award term evaluation and award term decision. The Contracting Officer will unilaterally decide whether or not the contractor is eligible for an award term extension, and in conjunction with the Contracting Officer's Representative, will determine the need for continued performance and funding availability.

(b) *Period of performance.* Provided the contractor has achieved the performance measures, e.g., acceptable quality levels, set forth in the clause ''Award Term Incentive Plan,'' the Contracting Officer may extend the contract by exercising _____ [insert the total award term incentive periods] additional award term incentive period(s) of _____ [insert the award term incentive period] months each. The total maximum period of performance under this contract, if the Government exercises any option periods and all award term incentive periods is _____ [insert the total of the base period, option periods (if any), and award term incentive periods] years.

(c) *Right not to grant or cancel the award term incentive.* (1) The Government has the unilateral right not to grant or to cancel award term incentive periods and the associated award term incentive plans if—

(i) The Contracting Officer has failed to initiate an award term incentive period, regardless of whether the contractor's performance permitted the Contracting Officer to consider initiating the award term incentive period; or

(ii) The contractor has failed to achieve the performance measures for the corresponding evaluation period; or

(iii) The Government notifies the contractor in writing it does not have funds available for the award term incentive periods; or

(iv) The Government no longer has a need for the award term incentive period at or before the time an award term incentive period is to commence.

(2) When an award term incentive period is not granted or cancelled, any—

(i) Prior award term incentive periods for which the contractor remains otherwise eligible are unaffected.

(ii) Subsequent award term incentive periods are thereby also cancelled.

(d) Cancellation of an award term incentive period that has not yet commenced for any of the reasons set forth in paragraph (c) of this clause shall not be considered either a termination for convenience or termination for default, and shall not entitle the contractor to any termination settlement or any other compensation. If the award term incentive is cancelled, a unilateral modification will cite this clause as the authority.

(e) *Award term incentive administration*. The award term incentive evaluation(s) will be completed in accordance with the schedule in the Award Term Incentive Plan. The contractor will be notified of the results and their eligibility to be considered for the respective award term incentive no later than 120 days after an evaluation period.

(f) *Review process*. The contractor may request a review of an award term incentive evaluation which has resulted in the contractor being ineligible for the award term incentive. The request shall be submitted in writing to the Contracting Officer within 15 days after notification of the results of the evaluation.

(End of clause)

[73 FR 1981, Jan. 11, 2008]

1552.216–78 Award term incentive plan.

As prescribed in 1515.406(c), insert a clause substantially the same as follows:

AWARD TERM INCENTIVE PLAN (FEB 2008)

(a) The Award Term Incentive Plan provides for the evaluation of performance, and, together with Agency need and availability of funding, serves as the basis for award term decisions. The Award Term Incentive Plan may be unilaterally revised by the Government. Any changes to the Award Term Incentive Plan will be made in writing and incorporated into the contract through a unilateral modification citing this clause. The Government will consult with the contractor prior to the issuance of a revised Award Term Incentive Plan, but is not required to obtain the contractor's consent to the revisions.

(b) [describe the evaluation periods and associated award term incentive periods, e.g., months 1-18 for award term incentive period I, and months 19-36 for award term incentive period II]

(c) [describe the evaluation schedule, e.g., 90 days after the end of the evaluation period]

(d) In order to be eligible for an award term incentive period the contractor must achieve all of the acceptable quality levels (AQL) for the evaluated tasks, both individual and aggregate, for that evaluation period. Failure to achieve any AQL renders the contractor ineligible for the associated award term incentive period. [identify the most significant tasks. Describe the AQL for each task as well as an overall AQL for the associated evaluation periods, e.g., an AQL of 90% each for tasks 1 and 3, and an AQL of 85% for task 7, and an overall AQL of 90% for the months 1–18 evaluation period]

(e) [If the contract will contain a quality assurance surveillance plan (QASP), reference the QASP, e.g., attachment 2. Typically, the performance standards and AQLs will be defined in the QASP]

(End of clause)

Alterate 1 (FEB 2008) As prescribed in 1516.406(d), substitute paragraphs substantially the same as following paragraphs (b) through (e) for paragraphs (b) through (e) in the basic clause:

(b) At the conclusion of each contract year, an average contract rating shall be determined by using the numerical ratings entered into the Department of Defense Contractor Performance Assessment Reporting System (CPARS) for this contract. The CPARS is an interactive database located on the Internet which EPA uses to record contractor performance evaluations.

(c) The contract year average rating shall be obtained by dividing the combined ratings by the number of ratings, for example:

Criteria	Rating
Quality of Product or Service	5.
Cost Control	4.
Timeliness of Performance	4.
Business Relations	5.
	18 (combined rating).
	/ 4 (number of ratings).

Criteria	Rating
	= 4.5 contract year average rating.

(d) The contractor shall be evaluated for performance from the start of the contract through Year ____ [identify the evaluation period, e.g., year three]. The average rating for each contract year (as derived in paragraph (c) above) will be combined and divided by [insert the number of evaluation periods] to obtain an overall average rating, for example:

Evaluation period	Average rating
Year One	4.5.
Year Two	4.75.
Year Three	4.75.
	14 (combined average rating).
	/ 3 (number of evaluation periods).
	= 4.66 overall average rating.

(e) Based on the overall average rating as determined under paragraph (d), provided that no individual rating, i.e., Quality of Product or Service, Cost Control, Timeliness of Performance, or Business Relations is below a 3, the contractor shall be eligible for the following award term periods:

(1) Overall average rating of 4.6 to 5.0—Two award term incentive periods of ____ [insert the number of months] months.

(2) Overall average rating of 4.0 to 4.6—One award term incentive period of ____ [insert the number of months] months.

[73 FR 1981, Jan. 11, 2008, as amended at 78 FR 46291, July 31, 2013]

1552.216–79 Award term availability of funds.

As prescribed in 1515.406(c), insert the following clause:

AWARD TERM AVAILABILITY OF FUNDS (FEB 2008)

Funds are not presently available for any award term. The Government's obligation under any award term is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the Government for any award term payment may arise until funds are made available to the Contracting Officer for an award term and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

[73 FR 1981, Jan. 11, 2008]

1552.217–70 Evaluation of contract options.

As prescribed in 1517.208(a), insert the following solicitation provision in Requests for Proposals when the solicitation contains options.

EVALUATION OF CONTRACT OPTIONS (APR 1984)

For award purposes, in addition to an offeror's response to the basic requirement, the Government will evaluate its response to all options, both technical and cost. Evaluation of options will not obligate the Government to exercise the options. For this solicitation the options are as specified in section H.

(End of provision)

1552.217–71 Option to extend the term of the contract—cost-type contract.

As prescribed in 1517.208(b), insert this contract clause in cost-reimbursement type term form contracts when applicable. If only one option period is used, enter ''NA'' in the proper places of the clause. If more than two option periods apply, the clause may be modified accordingly.

OPTION TO EXTEND THE TERM OF THE CONTRACT—COST-TYPE CONTRACT (APR 1984)

The Government has the option to extend the term of this contract for _____ additional period(s). If more than 60 days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last 60 days of the period of performance, the Government must provide to the Contractor written notification prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option. The Government's estimated level of effort is _____ direct labor hours for the first option period and _____ for the second. Use of an option will result in the following contract modifications:

(a) The ''Period of Performance'' clause will be amended to cover a base period from _____ to _____ and option periods from _____ to _____ and _____ to _____.

(b) Paragraph (a) of the ''Level of Effort'' clause will be amended to reflect a new and separate level of effort of _____ for the first option period and a new and separate level of

effort of _____ for the second option period.

(c) The ''Estimated Cost and Fixed Fee'' clause will be amended to reflect increased estimated costs and fixed fee for each option period as follows:

	Option 1	Option 2
Estimated cost		
Fixed fee		
Total		

(d) If the contract contains ''not to exceed amounts'' for elements of other direct costs (ODC), those amounts will be increased as follows:

Other direct cost item	Option 1	Option 2

(End of clause)

1552.217–72 Option to extend the term of the contract—cost-plus-award-fee contract.

As prescribed in 1517.208(c), insert this contract clause in cost-plus-award-fee term contracts when applicable. If only one option period is used, enter ''NA'' in the proper places of the clause. If more than two option periods apply, modify the clause accordingly.

OPTION TO EXTEND THE TERM OF THE CONTRACT—COST-PLUS-AWARD-FEE CONTRACT (APR 1984)

(a) The Government has the option to extend the term of this contract for ____ additional periods. If more than 60 days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last 60 days of the period of performance, the Government must provide to the Contractor written notification prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option. The Government's estimated level of effort is ____ direct labor hours for the first option period and ____ for the second. Use of an option will result in the following contract modifications:

(b) The ''Period of Performance'' clause will be amended to cover a base period from _____ to _____ and option periods from _____ to _____ and _____ to _____.

(c) Paragraph (a) of the ''Level of Effort'' clause will be amended to reflect a new and separate level of effort of _____ for the first option period and a new and separate level of effort of _____ for the second option period.

(d) The ''Estimated Cost Base Fee and Award Fee'' clause will be amended to reflect increased estimated costs and base fee and award fee pool for each option period as follows:

	Option 1	Option 2
Estimated cost		
Base fee		
Award fee pool		
Total		

(e) If this contract contains ''not to exceed amounts'' for elements of other direct costs (ODC), those amounts will be increased as follows:

Other direct cost item	Option 1	Option 2

(End of clause)

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1552.217–73 Option for increased quantity—cost-type contract.

As prescribed in 1517.208(d), insert this contract clause in cost-reimbursement type term form contracts when applicable. If only one option period is used, enter ''NA'' in the proper places of the clause. If more than two option periods apply, modify the clause accordingly.

OPTION FOR INCREASED QUANTITY—COST-TYPE CONTRACT (JUN 1997)

(a) By issuing a contract modification, the Government may increase the estimated level of effort by ____ direct labor hours during the base period, ____ during the first option period, and ____ during the second option period. The Government may issue a maximum of ____ orders to increase the level of effort in blocks of ____ hours during any given period. The estimated cost and fixed fee of each block of hours is as follows:

	Base period	Option 1	Option 2
Estimated cost			
Fixed fee			

	Base period	Option 1	Option 2
Total	.....	.....	.....

(b) When these options are exercised, paragraph (a) of the ''Level of Effort'' clause and the ''Estimated Cost and Fixed Fee'' clause will be modified accordingly.

(c) If this contract contains ''not to exceed amounts'' for elements of other direct costs (ODCs), those amounts will be increased as follows:

Other direct cost item	Option 1	Option 2

(End of clause)

[49 FR 8867, Mar. 8, 1984, as amended at 62 FR 37149, July 11, 1997; 62 FR 60667, Nov. 12, 1997]

1552.217–74 Option for increased quantity—cost-plus-award-fee contract.

As prescribed in 1517.208(e), insert this contract clause in cost-plus-award-fee term contracts when applicable. If only one option period is used, enter ''NA'' in the proper places of the clause. If more than two option periods apply, the clause may be modified accordingly.

OPTION FOR INCREASED QUANTITY—COST-PLUS-AWARD-FEE CONTRACT (JUN 1997)

(a) By issuing a contract modification, the Government may increase the estimated level of effort by ____ direct labor hours during the base period, ____ during the first option period, and ____ during the second option period. The Government may issue a maximum of ____ orders to increase the level of effort in blocks of ____ hours during any given period. The estimated cost, base fee, and award fee pool of each block of hours is as follows:

	Base period	Option 1	Option 2
Estimated cost	.....	.....	.....
Base fee	.....	.....	.....
Award fee pool	.....	.....	.....
Total	.....	.....	.....

(b) When these options are exercised, paragraph (a) of the ''Level of Effort'' clause and the ''Estimated Cost, Base Fee, and Award Fee'' clause will be modified accordingly.

(c) If this contract contains ''not to exceed amounts'' for elements of other direct costs (ODCs), those amounts will be increased as follows:

Other direct cost item	Option 1	Option 2

(End of clause)

[49 FR 8867, Mar. 8, 1984, as amended at 62 FR 37149, July 11, 1997; 62 FR 60667, Nov. 12, 1997]

1552.217–75 Option to extend the effective period of the contract—time and materials or labor hour contract.

As prescribed in 1517.208(f), insert this clause in time and materials or labor hour type contracts when applicable. This clause will be modified to reflect the actual number of option periods for the acquisition. If only one option period is used, modify (c) accordingly.

OPTION TO EXTEND THE EFFECTIVE PERIOD OF THE CONTRACT—TIME AND MATERIALS OR LABOR HOUR CONTRACT (APR 1984)

(a) The Government has the option to extend the effective period of this contract for ____ additional period(s). If more than sixty (60) days remain in the contract effective period, the Government, without prior written notification, may exercise this option by issuing a contract modification. To unilaterally exercise this option within the last 60 days of the effective period, the Government must issue written notification of its intent to exercise the option prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option.

(b) If the option(s) are exercised, the ''Ceiling Price'' clause will be modified to reflect a new and separate ceiling price of $_____ for the first option period and a new and separate ceiling price of $_____ for the second option period.

(c) The ''Effective Period of the Contract'' clause will be modified to cover a base period from _____ to _____ and option periods from _____ to _____ and _____ to _____.

(End of clause)

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1552.217–76 Option to extend the effective period of the contract—indefinite delivery/indefinite quantity contract.

As prescribed in 1517.208(g), the following is used in indefinite delivery/indefinite quantity type contracts with options to extend the effective period of the contract. The clause may be adjusted depending upon the number of options. If only one option period is used, modify (b) and (c) accordingly.

OPTION TO EXTEND THE EFFECTIVE PERIOD OF THE CONTRACT—INDEFINITE DELIVERY/INDEFINITE QUANTITY CONTRACT

(a) The Government has the option to extend the effective period of this contract for ____ additional period(s). If more than sixty (60) days remain in the contract effective period, the Government, without prior written notification, may exercise this option by issuing a contract modification. To unilaterally exercise this option within the last 60 days of the effective period, the Government must issue written notification of its intent to exercise the option prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option.

(b) If the options are exercised, the ''Minimum and Maximum Contract Amount'' clause will be modified to reflect new and separate minimums of ____ for the first option period and ____ for the second option period, and new and separate maximums of ____ for the first option period and ____ for the second option period.

(c) The ''Effective Period of the Contract'' clause will be modified to cover a base period from _____ to _____ and option periods from _____ to _____ and _____ to _____.

(End of clause)

1552.217–77 Option to extend the term of the contract fixed price.

As prescribed in 1517.208(g), insert the following clause:

OPTION TO EXTEND THE TERM OF THE CONTRACT FIXED PRICE (OCT 2000)

The Government has the option to extend the term of this contract for ____ additional period(s). If more than ____ days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last ____ days of the period of performance, the Government must provide to the Contractor written notification prior to that last ____ -day period. This preliminary notification does not commit the Government to exercising the option. Use of an option will result in the following contract modifications:

(a) The ''Period of Performance'' clause will be amended as follows to cover the Base and Option Periods:

Period	Start date	End date

(b) During the option period(s) the Contractor shall provide the services described below:

Period	Attachment

(c) The ''Consideration and Payment'' clause will be amended to reflect increased fixed prices for each option period as follows:

Fixed price	Option period

(End of clause)

[65 FR 58925, Oct. 3, 2000]

1552.219–70 Mentor-Protege Program.

As prescribed in 1519.203(a), insert the following clause:

MENTOR-PROTEGE PROGRAM OCT 2000

(a) The Contractor has been approved to participate in the EPA Mentor-Protege program. The purpose of the Program is to increase the participation of small disadvantaged businesses (SDBs) as subcontractors,

suppliers, and ultimately as prime contractors; to establish a mutually beneficial relationship with SDB's and EPA's large business prime contractors (although small businesses may participate as Mentors); to develop the technical and corporate administrative expertise of SDBs which will ultimately lead to greater success in competition for contract opportunities; to promote the economic stability of SDBs; and to aid in the achievement of goals for the use of SDBs in subcontracting activities under EPA contracts.

(b) The Contractor shall submit an executed Mentor-Protege agreement to the contracting officer, with a copy to the Office of Small and Disadvantaged Business Utilization or the Small Business Specialist, within thirty (30) calendar days after the effective date of the contract. The contracting officer will notify the Contractor within thirty (30) calendar days from its submission if the agreement is not accepted.

(c) The Contractor as a Mentor under the Program agrees to fulfill the terms of its agreement(s) with the Protege firm(s).

(d) If the Contractor or Protege firm is suspended or debarred while performing under an approved Mentor-Protege agreement, the Contractor shall promptly give notice of the suspension or debarment to the Office of Small and Disadvantaged Business Utilization and the contracting officer.

(e) Costs incurred by the Contractor in fulfilling their agreement(s) with the Protege firm(s) are not reimbursable on a direct basis under this contract.

(f) In an attachment to Standard Form 294, Subcontracts Report for Individual Contracts, the Contractor shall report on the progress made under their Mentor-Protege agreement(s), providing:

(1) The number of agreements in effect; and

(2) The progress in achieving the developmental assistance objectives under each agreement, including whether the objectives of the agreement have been met, problem areas encountered, and any other appropriate information.

(End of clause)

[66 FR 28674, May 24, 2001]

1552.219–71 Procedures for Participation in the EPA Mentor-Protege Program.

As prescribed in 1519.203(b), insert the following provision:

PROCEDURES FOR PARTICIPATION IN THE EPA MENTOR-PROTEGE PROGRAM (OCT 2000)

(a) This provision sets forth the procedures for participation in the EPA Mentor-Protege Program (hereafter referred to as the Program). The purpose of the Program is to increase the participation of concerns owned and/or controlled by socially and economically disadvantaged individuals as subcontractors, suppliers, and ultimately as prime contractors; to establish a mutually beneficial relationship between these concerns and EPA's large business prime contractors (although small businesses may participate as Mentors); to develop the technical and corporate administrative expertise of these concerns, which will ultimately lead to greater success in competition for contract opportunities; to promote the economic stability of these concerns; and to aid in the achievement of goals for the use of these concerns in subcontracting activities under EPA contracts. If the successful offeror is accepted into the Program they shall serve as a Mentor to a Protege firm(s), providing developmental assistance in accordance with an agreement with the Protege firm(s).

(b) To participate as a Mentor, the offeror must receive approval in accordance with paragraph (h) of this section.

(c) A Protege must be a concern owned and/or controlled by socially and economically disadvantaged individuals within the meaning of section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 673(a)(5) and (6)), including historically black colleges and universities. Further, in accordance with Public Law 102–389 (the 1993 Appropriation Act), for EPA's contracting purposes, economically and socially disadvantaged individuals shall be deemed to include women.

(d) Where there may be a concern regarding the Protege firm's eligibility to participate in the program, the protege's eligibility will be determined by the contracting officer after the SBA has completed any formal determinations.

(e) The offeror shall submit an application in accordance with paragraph (k) of this section as part of its proposal which shall include as a minimum the following information.

(1) A statement and supporting documentation that the offeror is currently performing under at least one active Federal contract with an approved subcontracting plan and is eligible for the award of Federal contracts;

(2) A summary of the offeror's historical and recent activities and accomplishments under any disadvantaged subcontracting programs. The offeror is encouraged to include any initiatives or outreach information believed pertinent to approval as a Mentor firm;

(3) The total dollar amount (including the value of all option periods or quantities) of EPA contracts and subcontracts received by the offeror during its two preceding fiscal years. (Show prime contracts and subcontracts separately per year);

(4) The total dollar amount and percentage of subcontract awards made to all concerns

owned and/or controlled by disadvantaged individuals under EPA contracts during its two preceding fiscal years. If recently required to submit a SF 295, provide copies of the two preceding year's reports;

(5) The number and total dollar amount of subcontract awards made to the identified Protege firm(s) during the two preceding fiscal years (if any).

(f) In addition to the information required by paragraph (e) of this section, the offeror shall submit as a part of the application the following information for each proposed Mentor-Protege relationship:

(1) Information on the offeror's ability to provide developmental assistance to the identified Protege firm and how the assistance will potentially increase contracting and subcontracting opportunities for the Protege firm.

(2) A letter of intent indicating that both the Mentor firm and the Protege firm intend to enter into a contractual relationship under which the Protege will perform as a subcontractor under the contract resulting from this solicitation and that the firms will negotiate a Mentor-Protege agreement. The letter of intent must be signed by both parties and contain the following information:

(i) The name, address and phone number of both parties;

(ii) The Protege firm's business classification, based upon the NAICS code(s) which represents the contemplated supplies or services to be provided by the Protege firm to the Mentor firm;

(iii) A statement that the Protege firm meets the eligibility criteria;

(iv) A preliminary assessment of the developmental needs of the Protege firm and the proposed developmental assistance the Mentor firm envisions providing the Protege. The offeror shall address those needs and how their assistance will enhance the Protege. The offeror shall develop a schedule to assess the needs of the Protege and establish criteria to evaluate the success in the Program;

(v) A statement that if the offeror or Protege firm is suspended or debarred while performing under an approved Mentor-Protege agreement the offeror shall promptly give notice of the suspension or debarment to the EPA Office of Small Disadvantaged Business Utilization (OSDBU) and the contracting officer. The statement shall require the Protege firm to notify the Contractor if it is suspended or debarred.

(g) The application will be evaluated on the extent to which the offeror's proposal addresses the items listed in paragraphs (e) and (f) of this section. To the maximum extent possible, the application should be limited to not more than 10 single pages, double spaced. The offeror may identify more than one Protege in its application.

(h) If the offeror is determined to be in the competitive range, or is awarded a contract without discussions, the offeror will be advised by the contracting officer whether their application is approved or rejected. The contracting officer, if necessary, may request additional information in connection with the offeror's submission of its revised or best and final offer. If the successful offeror has submitted an approved application, they shall comply with the clause titled ''Mentor-Protege Program.''

(i) Subcontracts of $1,000,000 or less awarded to firms approved as Proteges under the Program are exempt from the requirements for competition set forth in FAR 44.202–2(a)(5), and 52.244–5(b). However, price reasonableness must still be determined and the requirements in FAR 44.202–2(a)(8) for cost and price analysis continue to apply.

(j) Costs incurred by the offeror in fulfilling their agreement(s) with a Protege firm(s) are not reimbursable as a direct cost under the contract. Unless EPA is the responsible audit agency under FAR 42.703–1, offerors are encouraged to enter into an advance agreement with their responsible audit agency on the treatment of such costs when determining indirect cost rates. Where EPA is the responsible audit agency, these costs will be considered in determining indirect cost rates.

(k) Submission of Application and Questions Concerning the Program.

The application for the Program for Headquarters and Regional procurements shall be submitted to the contracting officer, and to the EPA OSDBU at the following address: Socioeconomic Business Program Officer, Office of Small and Disadvantaged Business Utilization, U.S. Environmental Protection Agency, Ariel Rios Building (1230A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564–4322, *Fax:* (202) 565–2473.

The application for the Program for RTP procurements shall be submitted to the contracting officer, and to the Small Business Specialist at the following address: Small Business Program Officer, RTP Procurement Operations Division (E105–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, *Telephone:* (919) 541–2249, Fax: (919) 541–5539.

The application for the Program for Cincinnati procurements shall be submitted to the contracting officer, and to the Small Business Specialist at the following address: Small and Disadvantaged Business Utilization Officer, Cincinnati Procurement Operations Division (CPOD-Norwood), U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Telephone: (513) 487–2024 *Fax:* (513) 487–2004.

(End of provision)

[67 FR 11441, Mar. 14, 2002]

1552.219–72 Small Disadvantaged Business Participation Program.

As prescribed in 1519.204(a), insert the following clause:

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM (OCT 2000)

(a) Section M of this solicitation contains a source selection factor or subfactor related to the participation of small disadvantaged business (SDB) concerns in the performance of the contract. The nature of the evaluation of an SDB offeror under this evaluation factor or subfactor is dependent upon whether the SDB concern qualifies for the price evaluation adjustment under the clause at FAR 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, and whether the SDB concern specifically waives this price evaluation adjustment.

(b) In order to be evaluated under the source selection factor or subfactor, an offeror must provide, with its offer, the following information:

(1) The extent of participation of SDB concerns in the performance of the contract in terms of the value of the total acquisition. Specifically, offerors must provide targets, expressed as dollars and percentages of the total contract value, for SDB participation in the applicable and authorized North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce. Total dollar and percentage targets must be provided for SDB participation by the prime contractor, including team members and joint venture partners. In addition, total dollar and percentage targets for SDB participation by subcontractors must be provided and listed separately;

(2) The specific identification of SDB concerns to be involved in the performance of the contract;

(3) The extent of commitment to use SDB concerns in the performance of the contract:

(4) The complexity and variety of the work the SDB concerns are to perform; and

(5) The realism of the proposal to use SDB concerns in the performance of the contract.

(c) An SDB offeror who waives the price evaluation adjustment provided in FAR 52.219–23 shall provide, with their offer, targets, expressed as dollars and percentages of the total contract value, for the work that it intends to perform as the prime contractor in the applicable and authorized NAICS Industry Subsectors as determined by the Department of Commerce. All of the offeror's identified targets described in paragraphs (b) and (c) of this clause will be incorporated into and made part of any resulting contract.

(End of provision)

[66 FR 28676, May 24, 2001]

1552.219–73 Small Disadvantaged Business Targets.

As prescribed in 1519.204(b), insert the following clause:

SMALL DISADVANTAGED BUSINESS TARGETS (OCT 2000)

(a) In accordance with FAR 19.1202–4(a) and EPAAR 1552.219–72, the following small disadvantaged business (SDB) participation targets proposed by the contractor are hereby incorporated into and made part of the contract:

Contractor targets	NAICS industry subsector(s)	Dollars	Percentage of total contract value
Total Prime Contractor Targets (including joint venture partners and team members)			
Total Subcontractor Targets			

(b) The following specifically identified SDB(s) was (were) considered under the Section—SDB participation evaluation factor or subfactor (continue on separate sheet if more space is needed):

(1) _____

(2) _____

(3) _____

(4) _____

(5) _____

The contractor shall promptly notify the contracting officer of any substitution of firms if the new firms are not SDB concerns.

(c) In accordance with FAR 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, the contractor shall report on the participation of SDB concerns in the performance of the contract no less than thirty (30) calendar days prior to each annual contractor performance evaluation [contracting officer may insert the dates for each performance

evaluation (i.e., every 12 months after the effective date of contract)] or as otherwise directed by the contracting officer.

(End of provision)

[66 FR 28676, May 24, 2001, as amended at 67 FR 5072, Feb. 4, 2002]

1552.219–74 Small disadvantaged business participation evaluation factor.

As prescribed in 1519.204(c), insert the following clause:

SMALL DISADVANTAGED BUSINESS PARTICIPATION EVALUATION FACTOR (OCT 2000)

Under this factor [or subfactor, if appropriate], offerors will be evaluated based on the demonstrated extent of participation of small disadvantaged business (SDB) concerns in the performance of the contract in each of the authorized and applicable North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce. As part of this evaluation, offerors will be evaluated based on:

(1) The extent to which SDB concerns are specifically identified to participate in the performance of the contract;

(2) The extent of the commitment to use SDB concerns in the performance of the contract (enforceable commitments will be weighed more heavily than nonenforceable commitments);

(3) The complexity and variety of the work the SDB concerns are to perform under the contract;

(4) The realism of the proposal to use SDB concerns in the performance of the contract; and

(5) The extent of participation of SDB concerns, at the prime contractor and subcontractor level, in the performance of the contract (in the authorized and applicable NAICS Industry Subsectors in terms of dollars and percentages of the total contract value.

(End of provision)

[65 FR 58928, Oct. 3, 2000]

1552.223–70 Protection of human subjects.

As prescribed in 1523.303–70, insert the following contract clause when the contract involves human test subjects.

PROTECTION OF HUMAN SUBJECTS (APR 1984)

(a) The Contractor shall protect the rights and welfare of human subjects in accordance with the procedures specified in its current Institutional Assurance on file with the Agency. The Contractor shall certify at least annually that an appropriate institutional committee has reviewed and approved the procedures which involve human subjects in accordance with the applicable Institutional Assurance accepted by the Agency.

(b) The Contractor shall bear full responsibility for the proper and safe performance of all work and services involving the use of human subjects under this contract.

(End of clause)

[49 FR 8867, Mar. 8, 1984, as amended at 78 FR 46291, July 31, 2013]

1552.223–71 EPA Green Meetings and Conferences.

As prescribed in 1523.703–1, insert the following provision or language substantially the same as the provision in solicitations for meetings and conference services.

EPA GREEN MEETINGS AND CONFERENCES (MAY 2007)

(a) The mission of the EPA is to protect human health and the environment. We expect that all Agency meetings and conferences will be staged using as many environmentally preferable measures as possible. Environmentally preferable means products or services that have a lesser or reduced effect on the environment when compared with competing products or services that serve the same purpose.

(b) As a potential meeting or conference provider for EPA, we require information about environmentally preferable features and practices your facility will have in place for the EPA event described in the solicitation.

(c) The following list is provided to assist you in identifying environmentally preferable measures and practices used by your facility. More information about EPA's Green Meetings initiative may be found on the Internet at *http://www.epa.gov/oppt/greenmeetings/*. Information about EPA voluntary partnerships may be found at *http://www.epa.gov/partners/index.htm*.

(1) Do you have a recycling program? If so, please describe.

(2) Do you have a linen/towel reuse option that is communicated to guests?

(3) Do guests have easy access to public transportation or shuttle services at your facility?

(4) Are lights and air conditioning turned off when rooms are not in use? If so, how do you ensure this?

(5) Do you provide bulk dispensers or reusable containers for beverages, food and condiments?

(6) Do you provide reusable serving utensils, napkins and tablecloths when food and beverages are served?

(7) Do you have an energy efficiency program? Please describe.

(8) Do you have a water conservation program? Please describe.

(9) Does your facility provide guests with paperless check-in & check-out?

(10) Does your facility use recycled or recyclable products? Please describe.

(11) Do you source food from local growers or take into account the growing practices of farmers that provide the food? Please describe.

(12) Do you use biobased or biodegradable products, including biobased cafeteriaware? Please describe.

(13) Do you provide training to your employees on these green initiatives? Please describe.

(14) What other environmental initiatives have you undertaken, including any environment-related certifications you possess, EPA voluntary partnerships in which you participate, support of a green suppliers network, or other initiatives? Include ''Green Meeting'' information in your quotation so that we may consider environmental preferability in selection of our meeting venue.

[72 FR 18404, Apr. 12, 2007]

1552.223–72 Care of laboratory animals.

As prescribed in 1523.303–72, insert the following clause:

CARE OF LABORATORY ANIMALS (OCT 2000)

(a) Before undertaking performance of any contract involving the use of laboratory animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with section 6, Public Law 89–544, Laboratory Animal Welfare Act, August 24, 1966, as amended by Public Law 91–579, Animal Welfare Act of 1970, December 24, 1970. The Contractor shall furnish evidence of such registration to the contracting officer.

(b) The Contractor shall acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in (a), above, of this provision.

(c) In the care of any live animals used or intended for use in the performance of this contract, the Contractor shall adhere to the principles enunciated in the Guide for Care and Use of Laboratory Animals prepared by the Institute of Laboratory Animal Resources, National Academy of Sciences (NAS)—National Research Council (NRC), and the United States Department of Agriculture's (USDA) regulations and standards issued under Public Laws enumerated in (a) above. In case of conflict between standards, the higher standard shall be used. The Contractor's reports on portions of the contract in which animals were used shall contain a certificate stating that the animals were cared for in accordance with the principles enunciated in the Guide for Care and Use of Laboratory Animals prepared by the Institute of Laboratory Animals Resources (NAS-NRC), and/or in the regulations and standards as promulgated by the Agricultural Research Service, USDA, pursuant to the Laboratory Animal Welfare Act of August 24, 1966 as amended (Public Law 89–544 and Public Law 91–579). NOTE: The Contractor may request registration of his facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which his research facility is located. The location of the appropriate APHIS Regional Office as well as information concerning this program may be obtained at *http://www.aphis.usda.gov/contact_us/*.

(End of clause)

[65 FR 58928, Oct. 3, 2000, as amended at 78 FR 46291, July 31, 2013]

1552.224–70 Social security numbers of consultants and certain sole proprietors and Privacy Act statement.

As prescribed in 1524.104, insert the following provision in all solicitations.

SOCIAL SECURITY NUMBERS OF CONSULTANTS AND CERTAIN SOLE PROPRIETORS AND PRIVACY ACT STATEMENT (APR 1984)

(a) Section 6041 of title 26 of the U.S. Code requires EPA to file Internal Revenue Service (IRS) Form 1099 with respect to individuals who receive payments from EPA under purchase orders or contracts. Section 6109 of title 26 of the U.S. Code authorizes collection by EPA of the social security numbers of such individuals for the purpose of filing IRS Form 1099. Social security numbers obtained for this purpose will be used by EPA for the sole purpose of filing IRS Form 1099 in compliance with section 6041 of title 26 of the U.S. Code.

(b) If the offeror or quoter is an individual, consultant, or sole proprietor and has no Employer Identification Number, insert the offeror's or quoter's social security number on the following line.

(End of provision)

1552.227–76 Project employee confidentiality agreement.

As prescribed in 1527.409, insert the following clause:

PROJECT EMPLOYEE CONFIDENTIALITY AGREEMENT (MAY 1994)

(a) The Contractor recognizes that Contractor employees in performing this contract may have access to data, either provided by the Government or first generated during contract performance, of a sensitive nature which should not be released to the public without Environmental Protection Agency (EPA) approval. Therefore, the Contractor agrees to obtain confidentiality agreements from all of its employees working on requirements under this contract.

(b) Such agreements shall contain provisions which stipulate that each employee agrees that the employee will not disclose, either in whole or in part, to any entity external to EPA, the Department of Justice, or the Contractor, any information or data (as defined in FAR Section 27.401) provided by the Government or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the EPA Contracting Officer. If a contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the EPA so that the EPA can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) The EPA may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to prevent the unauthorized disclosure of information to outside entities. If such a disclosure occurs without the written permission of the EPA Contracting Officer, the Government may terminate the contract, for default or convenience, or pursue other remedies as may be permitted by law or this contract.

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

(End of clause)

[59 FR 18624, Apr. 19, 1994]

1552.228–70 Insurance liability to third persons.

As prescribed in 1528.301, insert the following clause:

INSURANCE—LIABILITY TO THIRD PERSONS (OCT 2000)

(a)(1) Except as provided in subparagraph (2) below, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), and comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting officer may require or approve and with insurers approved by the Contracting officer.

(b) The Contractor agrees to submit for the Contracting officer's approval, to the extent and in the manner required by the Contracting officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

(c) The Contractor shall be reimbursed for that portion of the reasonable cost of insurance allocable to this contract, and required or approved under this clause, in accordance with its established cost accounting practices.

(End of clause)

[65 FR 58928, Oct. 3, 2000, as amended at 78 FR 46291, July 31, 2013]

1552.229–70 [Reserved]

1552.232–70 Submission of invoices.

As prescribed in 1532.908, insert the following clause:

SUBMISSION OF INVOICES (JUN 1996)

In order to be considered properly submitted, an invoice or request for contract financing payment must meet the following contract requirements in addition to the requirements of FAR 32.905:

(a) Unless otherwise specified in the contract, an invoice or request for contract financing payment shall be submitted as an original and five copies. The Contractor shall submit the invoice or request for contract financing payment to the following offices/individuals designated in the contract: the original and two copies to the Accounting Operations Office shown in Block ____ on the cover of the contract; two copies to the Contracting Officer's Representative (the Contracting Officer's Representative may direct one of these copies to a separate address); and one copy to the Contracting Officer.

(b) The Contractor shall prepare its invoice or request for contract financing payment on the prescribed Government forms. Standard Forms Number 1034, Public Voucher for Purchases and Services other than Personal, shall be used by contractors to show the amount claimed for reimbursement. Standard Form 1035, Public Voucher for Purchases and Services other than Personal—Continuation Sheet, shall be used to furnish the necessary supporting detail or additional information required by the Contracting Officer. The Contractor may submit self-designed forms which contain the required information.

(c)(1) The Contractor shall prepare a contract level invoice or request for contract financing payment in accordance with the invoice preparation instructions identified as a separate attachment in Section J of the contract. If contract work is authorized by individual work assignments, the invoice or request for contract financing payment shall also include a summary of the current and cumulative amounts claimed by cost element for each work assignment and for the contract total, as well as any supporting data for each work assignment as identified in the instructions.

(2) The invoice or request for contract financing payment shall include current and cumulative charges by major cost element such as direct labor, overhead, travel, equipment, and other direct costs. For current costs, each major cost element shall include the appropriate supporting schedule identified in the invoice preparation instructions. Cumulative charges represent the net sum of current charges by cost element for the contract period.

(3) The charges for subcontracts shall be further detailed in a supporting schedule showing the major cost elements for each subcontract. The degree of detail for any subcontract exceeding $5,000 is to be the same as that set forth under (c)(2).

(4) The charges for consultants shall be further detailed in the supporting schedule showing the major cost elements of each consultant. For current costs, each major cost element of the consulting agreement shall also include the supporting schedule identified in the invoice preparation instructions.

(d) Invoices or requests for contract financing payment must clearly indicate the period of performance for which payment is requested. Separate invoices or requests for contract financing payment are required for charges applicable to the basic contract and each option period.

(e)(1) Notwithstanding the provisions of the clause of this contract at FAR 52.216–7, Allowable Cost and Payment, invoices or requests for contract financing payment shall be submitted once per month unless there has been a demonstrated need and Contracting Officer approval for more frequent billings. When submitted on a monthly basis, the period covered by invoices or requests for contractor financing payments shall be the same as the period for monthly progress reports required under this contract.

(2) If the Contracting Officer allows submissions more frequently than monthly, one submittal each month shall have the same ending period of performance as the monthly progress report.

(3) Where cumulative amounts on the monthly progress report differ from the aggregate amounts claimed in the invoice(s) or request(s) for contract financing payments covering the same period, the contractor shall provide a reconciliation of the difference as part of the payment request.

(End of clause)

ALTERNATE I (JUN 1996).

If used in a fixed-rate type contract, substitute the following paragraphs (c)(1) and (2) for paragraphs (c)(1) and (2) of the basic clause:

(c)(1) The Contractor shall prepare a contract level invoice or request for contract financing payment in accordance with the invoice preparation instructions identified as a separate attachment in Section J of the contract. If contract work is authorized by individual delivery orders, the invoice or request for contract financing payment shall also include a summary of the current and cumulative amounts claimed by cost element for each delivery order and for the contract total, as well as any supporting data for each delivery order as identified in the instructions.

(2) The invoice or request for contract financing payment that employs a fixed rate feature shall include current and cumulative charges by contract labor category and by other major cost elements such as travel, equipment, and other direct costs. For current costs, each cost element shall include the appropriate supporting schedules identified in the invoice preparation instructions.

[61 FR 29317, June 10, 1996, as amended at 78 FR 46291, July 31, 2013]

1552.232–71—1552.232–72 [Reserved]

1552.232–73 Payments—fixed-rate services contract.

As prescribed in 1532.111, insert the following in indefinite delivery/indefinite quantity contracts with fixed services rates.

PAYMENTS—FIXED-RATE SERVICES CONTRACT (OCT 2000)

The Government shall pay the Contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer:

(a) *Hourly rate.* (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expenses, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the paying office. The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job, timecards, or other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract and subject to the terms of paragraph (e) of this contract, pay the voucher as approved by the Contracting Officer.

(2) Unless otherwise prescribed in the Schedule, the Contracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed $50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) of this contract.

(3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the ''Disputes'' clause of this contract. If the Schedule provides rates for overtime the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) *Materials, other direct costs, and subcontracts.* (1) The allowability of direct materials and other direct costs shall be determined by the Contracting Officer in accordance with subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Reasonable and allocable material handling costs or indirect costs may be included in the charge for material or other direct costs to the extent they are clearly excluded from the hourly rate. Material handling and/or indirect cost rates are specified in the ''Indirect Costs'' clause. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with subpart 31.2 of the FAR. The Contractor shall be reimbursed for items and services purchased directly for the contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials or other direct costs, as used in this clause, are those items which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product.

(2) Subcontracted effort may be included in the fixed hourly rates discussed in paragraph (a)(1) of this clause and will be reimbursed as discussed in that paragraph. Otherwise, the cost of subcontracts that are authorized under the subcontracts clause of this contract shall be reimbursable costs under this clause provided that the costs are consistent with paragraph (b)(3) of this clause. Reimbursable costs in connection with subcontracts shall be payable to subcontractors consistent with FAR 32.504 in the same manner as for services purchased directly for the contract under paragraph (a)(1) of this clause. Reimbursable costs shall not include any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(1) of this clause.

(3) To the extent able, the Contractor shall (i) obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and (ii) take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. Credit shall be given to the Government for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government, shall not be deducted from gross costs.

(4) If the nature of the work to be performed requires the Contractor to furnish

material which is regularly sold to the general public in the normal course of business by the Contractor, the price to be paid for such material, notwithstanding paragraph (b)(1) of this contract, shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Government; provided, that in no event shall such price be in excess of the Contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

(c) *Contracting Officer notification*. For contract administration purposes, the Contractor shall notify the Contracting Officer in writing when the total value of all delivery orders issued exceeds 85 percent of the maximum price specified in the schedule.

(d) *Maximum amount*. The Government shall not be obligated to pay the Contractor any amount in excess of the maximum amount in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the maximum amount set forth in the Schedule, unless or until the Contracting Officer shall have notified the Contractor in writing that the maximum amount has been increased and shall have specified in the notice a revised maximum that shall constitute the maximum amount for performance under this contract. When and to the extent that the maximum amount set forth in the Schedule has been increased, any hours expended, and material or other direct costs incurred by the Contractor in excess of the maximum amount before the increase, shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the maximum amount.

(e) *Audit*. At any time before final payment under this contract, the Contracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the ''completion voucher'' or ''completion invoice'' and substantiating material, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of paragraphs (f) and (g) of this clause), the Government shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event, later than one year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

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

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

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

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

(g) *Refunds*. The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Contracting Officer.

(End of clause)

[49 FR 8867, Mar. 8, 1984, as amended at 65 FR 58928, Oct. 3, 2000; 66 FR 28676, May 24, 2001; 67 FR 5073, Feb. 4, 2002]

1552.232–74 Payments—simplified acquisition procedures financing.

As prescribed in 1532.003, insert the following clause in solicitations and

orders that will provide simplified acquisition procedures financing.

PAYMENTS—SIMPLIFIED ACQUISITION PROCEDURES FINANCING (JUN 2006)

Simplified acquisition procedures financing in the form of _____ [contracting officer insert *advance* (prior to performance) and/or *interim* (according to payment schedule] payment(s)) will be provided under this commercial item order in accordance with the payment schedule below. If both advance and interim payments are to be made, the payment schedule shown below will specify the type of payment provided for each line item.

The Government shall pay the contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer's Representative: _____ [insert payment schedule].

[71 FR 32284, June 5, 2006, as amended at 78 FR 46291, July 31, 2013]

1552.233–70 Notice of filing requirements for agency protests.

As prescribed in 1533.103, insert the following provision in all types of solicitations:

NOTICE OF FILING REQUIREMENTS FOR AGENCY PROTESTS (JUL 1999)

Agency protests must be filed with the Contracting Officer in accordance with the requirements of FAR 33.103 (d) and (e). Within 10 calendar days after receipt of an adverse Contracting Officer decision, the protester may submit a written request for an independent review by the Head of the Contracting Activity. This independent review is available only as an appeal of a Contracting Officer decision on a protest. Accordingly, as provided in 4 CFR 21.2(a)(3), any protest to the GAO must be filed within 10 days of knowledge of the initial adverse Agency action.

[64 FR 17110, Apr. 8, 1999, as amended at 78 FR 46291, July 31, 2013]

1552.235–70 Screening business information for claims of confidentiality.

As prescribed in 1535.007–70(a), insert the following contract clause in all types of contracts when the Contracting Officer has determined that during performance of this contract, the Contractor may be required to collect information to perform the work required under this contract. Some of the information may consist of trade secrets or commercial or financial information that would be considered as proprietary or confidential by the business that has the right to the information. The following clause enables EPA to resolve any claims of confidentiality concerning the information that the Contractor will furnish under a contract. The clause entitled ''Treatment of Confidential Business Information'' shall also be included in the contract:

SCREENING BUSINESS INFORMATION FOR CLAIMS OF CONFIDENTIALITY (APR 1984)

(a) Whenever collecting information under this contract, the Contractor agrees to comply with the following requirements:

(1) If the Contractor collects information from public sources, such as books, reports, journals, periodicals, public records, or other sources that are available to the public without restriction, the Contractor shall submit a list of these sources to the appropriate program office at the time the information is initially submitted to EPA. The Contractor shall identify the information according to source.

(2) If the Contractor collects information from a State or local Government or from a Federal agency, the Contractor shall submit a list of these sources to the appropriate program office at the time the information is initially submitted to EPA. The Contractor shall identify the information according to source.

(3) If the Contractor collects information directly from a business or from a source that represents a business or businesses, such as a trade association:

(i) Before asking for the information, the Contractor shall identify itself, explain that it is performing contractual work for the U.S. Environmental Protection Agency, identify the information that it is seeking to collect, explain what will be done with the information, and give the following notice:

(A) You may, if you desire, assert a business confidentiality claim covering part or all of the information. If you do assert a claim, the information will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR part 2, subpart B.

(B) If no such claim is made at the time this information is received by the Contractor, it may be made available to the public by the Environmental Protection Agency without further notice to you.

(C) The contractor shall, in accordance with FAR part 9, execute a written agreement regarding the limitations of the use of this information and forward a copy of the agreement to the Contracting Officer.

(ii) Upon receiving the information, the Contractor shall make a written notation that the notice set out above was given to

the source, by whom, in what form, and on what date.

(iii) At the time the Contractor initially submits the information to the appropriate program office, the Contractor shall submit a list of these sources, identify the information according to source, and indicate whether the source made any confidentiality claim and the nature and extent of the claim.

(b) The Contractor shall keep all information collected from nonpublic sources confidential in accordance with the clause in this contract entitled ''Treatment of Confidential Business Information'' as if it had been furnished to the Contractor by EPA.

(c) The Contractor agrees to obtain the written consent of the Contracting Officer, after a written determination by the appropriate program office, prior to entering into any subcontract that will require the subcontractor to collect information. The Contractor agrees to include this clause, including this paragraph (c), and the clause entitled ''Treatment of Confidential Business Information'' in all subcontracts awarded pursuant to this contract that require the subcontractor collect information.

(End of clause)

1552.235–71 Treatment of confidential business information.

As prescribed in 1535.007–70(b), insert the following contract clause in all types of contracts when the Contracting Officer has determined that in the performance of a contract, EPA may furnish confidential business information to the Contractor that EPA obtained under the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. 1251, *et seq.*), the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*), the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), or the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*). EPA regulations on confidentiality of business information in 40 CFR part 2 subpart B require that the Contractor agree to the clause entitled ''Treatment of Confidential Business Information'' before any confidential business information may be furnished to the Contractor:

TREATMENT OF CONFIDENTIAL BUSINESS INFORMATION (APR 1984)

(a) The Contracting Officer, after a written determination by the appropriate program office, may disclose confidential business information to the Contractor necessary to carry out the work required under this contract. The Contractor agrees to use the confidential information only under the following conditions:

(1) The Contractor and Contractor's Employees shall: (i) use the confidential information only for the purposes of carrying out the work required by the contract; (ii) not disclose the information to anyone other than EPA employees without the prior written approval of the Assistant General Counsel for Contracts and Information Law; and (iii) return to the Contracting Officer all copies of the information, and any abstracts or excerpts therefrom, upon request by the Contracting Officer, whenever the information is no longer required by the Contractor for the performance of the work required by the contract, or upon completion of the contract.

(2) The Contractor shall obtain a written agreement to honor the above limitations from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(3) The Contractor agrees that these contract conditions concerning the use and disclosure of confidential information are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(4) The Contractor shall not use any confidential information supplied by EPA or obtained during performance hereunder to compete with any business to which the confidential information relates.

(b) The Contractor agrees to obtain the written consent of the Contracting Officer, after a written determination by the appropriate program office, prior to entering into any subcontract that will involve the disclosure of confidential business information by the Contractor to the subcontractor. The Contractor agrees to include this clause, including this paragraph (b), in all subcontracts awarded, pursuant to this contract, that require the furnishing of confidential business information to the subcontractor.

(End of clause)

1552.235–72 [Reserved]

1552.235–73 Access to Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information (APR 1996).

As prescribed in 1535.007(a), insert the following provision:

ACCESS TO FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT CONFIDENTIAL BUSINESS INFORMATION (APR 1996)

In order to perform duties under the contract, the Contractor will need to be authorized for access to Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) confidential business information (CBI). The Contractor and all of its employees handling CBI while working under the contract will be required to follow the procedures contained in the security manual entitled ''FIFRA Information Security Manual.'' These procedures include applying for FIFRA CBI access authorization for each individual working under the contract who will have access to FIFRA CBI, execution of confidentiality agreements, and designation by the Contractor of an individual to serve as a Document Control Officer. The Contractor will be required to abide by those clauses contained in EPAAR 1552.235–70, 1552.235- 71, and 1552.235–77 that are appropriate to the activities set forth in the contract.

Until EPA has approved the Contractor's security plan, the Contractor may not be authorized for FIFRA CBI access away from EPA facilities.

(End of provision)

[61 FR 14265, Apr. 1, 1996]

1552.235–74 [Reserved]

1552.235–75 Access to Toxic Substances Control Act Confidential Business Information (APR 1996).

As prescribed in 1535.007(b), insert the following provision:

ACCESS TO TOXIC SUBSTANCES CONTROL ACT CONFIDENTIAL BUSINESS INFORMATION (APR 1996)

In order to perform duties under the contract, the Contractor will need to be authorized for access to Toxic Substances Control Act (TSCA) confidential business information (CBI). The Contractor and all of its employees handling CBI while working under the contract will be required to follow the procedures contained in the security manual entitled ''TSCA Confidential Business Information Security Manual.'' These procedures include applying for TSCA CBI access authorization for each individual working under the contract who will have access to TSCA CBI, execution of confidentiality agreements, and designation by the Contractor of an individual to serve as a Document Control Officer. The Contractor will be required to abide by those clauses contained in EPAAR 1552.235–70, 1552.235-71, and 1552.235–78 that are appropriate to the activities set forth in the contract.

Until EPA has inspected and approved the Contractor's facilities, the Contractor may not be authorized for TSCA CBI access away from EPA facilities.

(End of provision)

[61 FR 14265, Apr. 1, 1996]

1552.235–76 Treatment of Confidential Business Information (APR 1996).

As prescribed in 1535.007–70(c), insert the following clause:

TREATMENT OF CONFIDENTIAL BUSINESS INFORMATION (TSCA)(APR 1996)

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose confidential business information (CBI) to the Contractor necessary to carry out the work required under this contract. The Contractor agrees to use the CBI only under the following conditions:

(1) The Contractor and Contractor's employees shall (i) use the CBI only for the purposes of carrying out the work required by the contract; (ii) not disclose the information to anyone other than properly cleared EPA employees without the prior written approval of the Assistant General Counsel for Information Law or his/her designee; and (iii) return the CBI to the PO or his/her designee, whenever the information is no longer required by the Contractor for performance of the work required by the contract, or upon completion of the contract.

(2) The Contractor shall obtain a written agreement to honor the above limitations from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(3) The Contractor agrees that these contract conditions concerning the use and disclosure of CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected businesses having a proprietary interest in the information.

(4) The Contractor shall not use any CBI supplied by EPA or obtained during performance hereunder to compete with any business to which the CBI relates.

(b) The Contractor agrees to obtain the written consent of the CO, after a written determination by the appropriate program office, prior to entering into any subcontract that will involve the disclosure of CBI by the Contractor to the subcontractor. The Contractor agrees to include this clause, including this paragraph (b), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(End of clause)

[61 FR 14266, Apr. 1, 1996, as amended at 61 FR 57339, Nov. 6, 1996]

1552.235–77 Data Security for Federal Insecticide, Fungicide and Rodenticide Act Confidential Business Information (DEC 1997).

As prescribed in 1535.007–70(d), insert the following clause:

DATA SECURITY FOR FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT CONFIDENTIAL BUSINESS INFORMATION (DEC 1997)

The Contractor shall handle Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) confidential business information (CBI) in accordance with the contract clause entitled ''Treatment of Confidential Business Information'' and ''Screening Business Information for Claims of Confidentiality,'' the provisions set forth below, and the Contractor's approved detailed security plan.

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose FIFRA CBI to the contractor necessary to carry out the work required under this contract. The Contractor shall protect all FIFRA CBI to which it has access (including CBI used in its computer operations) in accordance with the following requirements:

(1) The Contractor and Contractor's employees shall follow the security procedures set forth in the FIFRA Information Security Manual. The manual may be obtained from the Project Officer (PO) or the Chief, Information Services Branch (ISB), Program Management and Support Division, Office of Pesticide Programs (OPP) (H7502C), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(2) The Contractor and Contractor's employees shall follow the security procedures set forth in the Contractor's security plan(s) approved by EPA.

(3) Prior to receipt of FIFRA CBI by the Contractor, the Contractor shall ensure that all employees who will be cleared for access to FIFRA CBI have been briefed on the handling, control, and security requirements set forth in the FIFRA Information Security Manual.

(4) The Contractor Document Control Officer (DCO) shall obtain a signed copy of the FIFRA ''Contractor Employee Confidentiality Agreement'' from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(b) The Contractor agrees that these requirements concerning protection of FIFRA CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(c) The Contractor understands that CBI obtained by EPA under FIFRA may not be disclosed except as authorized by the Act, and that any unauthorized disclosure by the Contractor or the Contractor's employees may subject the Contractor and the Contractor's employees to the criminal penalties specified in FIFRA (7 U.S.C. 136h(f)). For purposes of this contract, the only disclosures that EPA authorizes the Contractor to make are those set forth in the clause entitled ''Treatment of Confidential Business Information.''

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(e) At the request of EPA or at the end of the contract, the Contractor shall return to the EPA PO or his/her designee all documents, logs, and magnetic media which contain FIFRA CBI. In addition, each Contractor employee who has received FIFRA CBI clearance will sign a ''Confidentiality Agreement for Contractor Employees Upon Relinquishing FIFRA CBI Access Authority.'' The Contractor DCO will also forward those agreements to the EPA PO or his/her designee, with a copy to the CO, at the end of the contract.

(f) If, subsequent to the date of this contract, the Government changes the security requirements, the CO shall equitably adjust affected provisions of this contract, in accordance with the ''Changes'' clause when:

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(End of clause)

[61 FR 14266, Apr. 1, 1996, as amended at 62 FR 38478, July 18, 1997; 63 FR 418, Jan. 6, 1998; 65 FR 47325, Aug. 2, 2000]

1552.235–78 Data Security for Toxic Substances Control Act Confidential Business Information (DEC 1997).

As prescribed in 1535.007–70(e), insert the following clause:

DATA SECURITY FOR TOXIC SUBSTANCES CONTROL ACT CONFIDENTIAL BUSINESS INFORMATION (DEC 1997)

The Contractor shall handle Toxic Substances Control Act (TSCA) confidential business information (CBI) in accordance with the contract clause entitled ''Treatment of Confidential Business Information'' and ''Screening Business Information for Claims of Confidentiality.''

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose TSCA CBI to the contractor necessary to carry out the work required under this contract. The Contractor shall protect all TSCA CBI to which it has access (including CBI used in its computer operations) in accordance with the following requirements:

(1) The Contractor and Contractor's employees shall follow the security procedures set forth in the TSCA CBI Security Manual. The manual may be obtained from the Director, Information Management Division (IMD), Office of Pollution Prevention and Toxics (OPPT), U.S. Environmental Protection Agency (EPA), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Prior to receipt of TSCA CBI by the Contractor, the Contractor shall ensure that all employees who will be cleared for access to TSCA CBI have been briefed on the handling, control, and security requirements set forth in the TSCA CBI Security Manual.

(2) The Contractor shall permit access to and inspection of the Contractor's facilities in use under this contract by representatives of EPA's Assistant Administrator for Administration and Resources Management, and the TSCA Security Staff in the OPPT, or by the EPA Project Officer.

(3) The Contractor Document Control Officer (DCO) shall obtain a signed copy of EPA Form 7740–6, ''TSCA CBI Access Request, Agreement, and Approval,'' from each of the Contractor's employees who will have access to the information before the employee is allowed access. In addition, the Contractor shall obtain from each employee who will be cleared for TSCA CBI access all information required by EPA or the U.S. Office of Personnel Management for EPA to conduct a Minimum Background Investigation.

(b) The Contractor agrees that these requirements concerning protection of TSCA CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(c) The Contractor understands that CBI obtained by EPA under TSCA may not be disclosed except as authorized by the Act, and that any unauthorized disclosure by the Contractor or the Contractor's employees may subject the Contractor and the Contractor's employees to the criminal penalties specified in TSCA (15 U.S.C. 2613(d)). For purposes of this contract, the only disclosures that EPA authorizes the Contractor to make are those set forth in the clause entitled ''Treatment of Confidential Business Information.''

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(e) At the request of EPA or at the end of the contract, the Contractor shall return to the EPA PO or his/her designee, all documents, logs, and magnetic media which contain TSCA CBI. In addition, each Contractor employee who has received TSCA CBI clearance will sign EPA Form 7740–18, ''Confidentiality Agreement for Contractor Employees Upon Relinquishing TSCA CBI Access Authority.'' The Contractor DCO will also forward those agreements to the EPA OPPT/IMD, with a copy to the CO, at the end of the contract.

(f) If, subsequent to the date of this contract, the Government changes the security requirements, the CO shall equitably adjust affected provisions of this contract, in accordance with the ''Changes'' clause, when:

(1) The Contractor submits a timely written request for an equitable adjustment; and,

(2) The facts warrant an equitable adjustment.

(End of clause)

[61 FR 14266, Apr. 1, 1996, as amended at 62 FR 38478, July 18, 1997; 63 FR 418, Jan. 6, 1998; 65 FR 47325, Aug. 2, 2000]

1552.235–79 Release of contractor confidential business information (APR 1996).

As prescribed in 1535.007–70(f), insert the following clause:

RELEASE OF CONTRACTOR CONFIDENTIAL BUSINESS INFORMATION (APR 1996)

(a) The Environmental Protection Agency (EPA) may find it necessary to release information submitted by the Contractor either in response to this solicitation or pursuant to the provisions of this contract, to individuals not employed by EPA. Business information that is ordinarily entitled to confidential treatment under existing Agency regulations (40 CFR part 2) may be included in the information released to these individuals. Accordingly, by submission of this proposal or signature on this contract or other contracts, the Contractor hereby consents to a limited release of its confidential business information (CBI).

(b) Possible circumstances where the Agency may release the Contractor's CBI include, but are not limited to the following:

(1) To other Agency contractors tasked with assisting the Agency in the recovery of Federal funds expended pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sec. 9607, as amended, (CERCLA or Superfund);

(2) To the U.S. Department of Justice (DOJ) and contractors employed by DOJ for use in advising the Agency and representing the Agency in procedures for the recovery of Superfund expenditures;

(3) To parties liable, or potentially liable, for costs under CERCLA Sec. 107 (42 U.S.C. Sec. 9607), et al, and their insurers (Potentially Responsible Parties) for purposes of facilitating settlement or litigation of claims against such parties;

(4) To other Agency contractors who, for purposes of performing the work required under the respective contracts, require access to information the Agency obtained under the Clean Air Act (42 U.S.C. 7401 *et seq.*); the Federal Water Pollution Control Act (33 U.S.C.1251 *et seq.*); the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*); the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*); or the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*);

(5) To other Agency contractors tasked with assisting the Agency in handling and processing information and documents in the administration of Agency contracts, such as providing both preaward and post award audit support and specialized technical support to the Agency's technical evaluation panels;

(6) To employees of grantees working at EPA under the Senior Environmental Employment (SEE) Program;

(7) To Speaker of the House, President of the Senate, or Chairman of a Committee or Subcommittee;

(8) To entities such as the General Accounting Office, boards of contract appeals, and the Courts in the resolution of solicitation or contract protests and disputes;

(9) To Agency contractor employees engaged in information systems analysis, development, operation, and maintenance, including performing data processing and management functions for the Agency; and

(10) Pursuant to a court order or court-supervised agreement.

(c) The Agency recognizes an obligation to protect the contractor from competitive harm that may result from the release of such information to a competitor. (See also the clauses in this document entitled ''Screening Business Information for Claims of Confidentiality'' and ''Treatment of Confidential Business Information.'') Except where otherwise provided by law, the Agency will permit the release of CBI under subparagraphs (1), (3), (4), (5), (6), or (9) only pursuant to a confidentiality agreement.

(d) With respect to contractors, 1552.235–71 will be used as the confidentiality agreement. With respect to Potentially Responsible Parties, such confidentiality agreements may permit further disclosure to other entities where necessary to further settlement or litigation of claims under CERCLA. Such entities include, but are not limited to accounting firms and technical experts able to analyze the information, provided that they also agree to be bound by an appropriate confidentiality agreement.

(e) This clause does not authorize the Agency to release the Contractor's CBI to the public pursuant to a request filed under the Freedom of Information Act.

(f) The Contractor agrees to include this clause, including this paragraph (f), in all subcontracts at all levels awarded pursuant to this contract that require the furnishing of confidential business information by the subcontractor.

(End of clause)

[61 FR 14267, Apr. 1, 1996]

1552.235–80 Access to confidential business information.

As prescribed in 1535.007–70(g), insert the following clause.

ACCESS TO CONFIDENTIAL BUSINESS INFORMATION (OCT 2000)

It is not anticipated that it will be necessary for the contractor to have access to confidential business information (CBI) during the performance of tasks required under this contract. However, the following applies to any and all tasks under which the contractor will or may have access to CBI:

The contractor shall not have access to CBI submitted to EPA under any authority until the contractor obtains from the Project Officer a certification that the EPA has followed all necessary procedures under 40 CFR part 2, subpart B (and any other applicable procedures), including providing, where necessary, prior notice to the submitters of disclosure to the contractor.

(End of clause)

[65 FR 58928, Oct. 3, 2000]

1552.236–70 Samples and certificates.

As prescribed in 1536.521, insert the following contract clause in construction contracts.

SAMPLES AND CERTIFICATES (APR 1984)

When required by the specifications or the Contracting Officer, samples, certificates, and test data shall be submitted after award of the contract, prepaid, in time for proper action by the Contracting Officer or his/her designated representative. Certificates and test data shall be submitted in triplicate to show compliance of materials and construction specified in the contract performance requirements. Samples shall be submitted in duplicate by the Contractor, except as otherwise specified, to show compliance with the

contract requirements. Materials or equipment for which samples, certifications or test data are required shall not be used in the work until approved in writing by the Contracting Officer.

(End of clause)

1552.237–70 Contract publication review procedures.

As prescribed in 1537.110, insert the following contract clause when the products of the contract are subject to contract publication review.

CONTRACT PUBLICATION REVIEW PROCEDURES (APR 1984)

(a) Material generated under this contract intended for release to the public is subject to the Agency's publication review process in accordance with the EPA Order on this subject and the following.

(b) Except as indicated in paragraph (c) of this contract, the Contractor shall not independently publish or print material generated under this contract until after completion of the EPA review process. The Contracting Officer's Representative will notify the Contractor of review completion within ____ calendar days after the Contractor's transmittal to the Contracting Officer's Representative of material generated under this contract. If the Contractor does not receive Contracting Officer's Representative notification within this period, the Contractor shall immediately notify the Contracting Officer in writing.

(c) The Contractor may publish, in a scientific journal, material resulting directly or indirectly from work performed under this contract, subject to the following:

(1) The Contractor shall submit to the Contracting Officer and the Contracting Officer's Representative, at least 30 days prior to publication, a copy of any paper, article, or other dissemination of information intended for publication.

(2) The Contractor shall include the following statement in a journal article which has not been subjected to EPA review: ''Although the research described in this article has been funded wholly or in part by the United States Environmental Protection Agency contract (number) to (Name of Contractor), it has not been subject to the Agency's review and therefore does not necessarily reflect the views of the Agency, and no official endorsement should be inferred.''

(3) Following publication of the journal article, the Contractor shall submit five copies of the journal article to the Contracting Officer's Representative, and one copy to the Contracting Officer.

(d) If the Government has completed the review process and agreed that the contract material may be attributed to EPA, the Contractor shall include the following statement in the document:

This material has been funded wholly or in part by the United States Environmental Protection Agency under contract (number) to (name). It has been subject to the Agency's review, and it has been approved for publication as an EPA document. Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

(e) If the Government has completed the review process, but decides not to publish the material, the Contractor may independently publish and distribute the material for its own use and its own expense, and shall include the following statement in any independent publication:

Although the information described in this article has been funded wholly or in part by the United States Environmental Protection Agency under contract (number) to (name), it does not necessarily reflect the views of the Agency and no official endorsement should be inferred.

(End of clause)

[49 FR 8867, Mar. 8, 1984, as amended at 78 FR 46292, July 31, 2013]

1552.237–71 Technical direction.

As prescribed in 1537.110, insert a clause substantially the same as the following:

TECHNICAL DIRECTION (AUG 2009)

(a) *Definitions.*

Contracting officer technical representative (COTR), means an individual appointed by the contracting officer in accordance with Agency procedures to perform specific technical and administrative functions.

Task order, as used in this clause, means work assignment, delivery order, or any other document issued by the contracting officer to order work under a service contract.

(b) The Contracting Officer's Representative(s) may provide technical direction on contract or work request performance. Technical direction includes:

(1) Instruction to the contractor that approves approaches, solutions, designs, or refinements; fills in details; completes the general descriptions of work shifts emphasis among work areas or tasks; and

(2) Evaluation and acceptance of reports or other deliverables.

(c) Technical direction must be within the scope of work of the contract and any task order there under. The Contracting Officer's Representative(s) does not have the authority to issue technical direction which:

(1) Requires additional work outside the scope of the contract or task order;

(2) Constitutes a change as defined in the ''Changes'' clause;

(3) Causes an increase or decrease in the estimated cost of the contract or task order;

(4) Alters the period of performance of the contract or task order; or

(5) Changes any of the other terms or conditions of the contract or task order.

(d) Technical direction will be issued in writing or confirmed in writing within five (5) days after oral issuance. The contracting officer will be copied on any technical direction issued by the Contracting Officer's Representative.

(e) If, in the contractor's opinion, any instruction or direction by the Contracting Officer's Representative(s) falls within any of the categories defined in paragraph (c) of the clause, the contractor shall not proceed but shall notify the contracting officer in writing within 3 days after receiving it and shall request that the contracting officer take appropriate action as described in this paragraph. Upon receiving this notification, the contracting officer shall:

(1) Advise the contractor in writing as soon as practicable, but no later than 30 days after receipt of the contractor's notification, that the technical direction is within the scope of the contract effort and does not constitute a change under the ''Changes'' clause of the contract;

(2) Advise the contractor within a reasonable time that the government will issue a written modification to the contract; or

(3) Advise the contractor that the technical direction is outside the scope of the contract and is thereby rescinded.

(f) A failure of the contractor and contracting officer to agree as to whether the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto, shall be subject to the provisions of the clause entitled ''Disputes'' in this contract.

(g) Any action(s) taken by the contractor, in response to any direction given by any person acting on behalf of the government or any government official other than the contracting officer or the Contracting Officer's Representative, shall be at the contractor's risk.

(End of clause)

[74 FR 37175, July 28, 2009, as amended at 78 FR 46292, July 31, 2013]

1552.237–72 Key personnel.

As prescribed in 1537.110, insert the following contract clause when it is necessary for contract performance to identify Contractor key personnel.

KEY PERSONNEL (APR 1984)

(a) The Contractor shall assign to this contract the following key personnel:

(b) During the first ninety (90) days of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Contractor shall notify the Contracting Officer within 15 calendar days after the occurrence of any of these events and provide the information required by paragraph (c) of this clause. After the initial 90-day period, the Contractor shall submit the information required by paragraph (c) to the Contracting Officer at least 15 days prior to making any permanent substitutions.

(c) The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. This clause will be modified to reflect any approved changes of key personnel.

(End of clause)

1552.237–73 [Reserved]

1552.237–74 Publicity.

As prescribed in 1537.110, insert the following contract clause in contracts pertaining to the removal or remedial activities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (''Super Fund'') program. The term ''on-scene coordinator'' may be substituted with ''Contracting Officer's Representative.''

PUBLICITY (APR 1984)

(a) The Contractor agrees to notify and obtain the verbal approval of the on-scene coordinator (or Contracting Officer's Representative) prior to releasing any information to the news media regarding the removal or remedial activities being conducted under this contract.

(b) It is also agreed that the Contractor shall acknowledge EPA support whenever the work funded in whole or in part by this contract is publicized in any news media.

(End of clause)

[49 FR 8867, Mar. 8, 1984, as amended at 78 FR 46292, July 31, 2013]

1552.237–75 Paperwork Reduction Act.

As prescribed in 1537.110, insert this contract clause in any contract requiring the collection of identical information from ten (10) or more public respondents.

PAPERWORK REDUCTION ACT (APR 1984)

If it is established at award or subsequently becomes a contractual requirement to collect identical information from ten (10) or more public respondents, the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* applies. In that event, the Contractor shall not take any action to solicit information from any of the public respondents until notified in writing by the Contracting officer that the required Office of Management and Budget (OMB) final clearance was received.

(End of clause)

1552.237–76 Government-Contractor Relations.

As prescribed in 1537.110(g), insert the following clause:

GOVERNMENT-CONTRACTOR RELATIONS (JUN 1999)

(a) The Government and the Contractor understand and agree that the services to be delivered under this contract by the contractor to the Government are non-personal services and the parties recognize and agree that no employer-employee relationship exists or will exist under the contract between the Government and the Contractor's personnel. It is, therefore, in the best interest of the Government to afford both parties a full understanding of their respective obligations.

(b) Contractor personnel under this contract shall not:

(1) Be placed in a position where they are under the supervision, direction, or evaluation of a Government employee.

(2) Be placed in a position of command, supervision, administration or control over Government personnel, or over personnel of other Contractors under other EPA contracts, or become a part of the Government organization.

(3) Be used in administration or supervision of Government procurement activities.

(c) *Employee relationship.* (1) The services to be performed under this contract do not require the Contractor or his/her personnel to exercise personal judgment and discretion on behalf of the Government. Rather the Contractor's personnel will act and exercise personal judgment and discretion on behalf of the Contractor.

(2) Rules, regulations, directives, and requirements that are issued by the U.S. Environmental Protection Agency under its responsibility for good order, administration, and security are applicable to all personnel who enter the Government installation or who travel on Government transportation. This is not to be construed or interpreted to establish any degree of Government control that is inconsistent with a non-personal services contract.

(d) *Inapplicability of employee benefits.* This contract does not create an employer-employee relationship. Accordingly, entitlements and benefits applicable to such relationships do not apply.

(1) Payments by the Government under this contract are not subject to Federal income tax withholdings.

(2) Payments by the Government under this contract are not subject to the Federal Insurance Contributions Act.

(3) The Contractor is not entitled to unemployment compensation benefits under the Social Security Act, as amended, by virtue of performance of this contract.

(4) The Contractor is not entitled to workman's compensation benefits by virtue of this contract.

(5) The entire consideration and benefits to the Contractor for performance of this contract is contained in the provisions for payment under this contract.

(e) *Notice.* It is the Contractor's, as well as, the Government's responsibility to monitor contract activities and notify the Contracting Officer if the Contractor believes that the intent of this clause has been or may be violated.

(1) The Contractor should notify the Contracting Officer in writing promptly, within _____ (to be negotiated and inserted into the basic contract at contract award) calendar days from the date of any incident that the Contractor considers to constitute a violation of this clause. The notice should include the date, nature and circumstance of the conduct, the name, function and activity of each Government employee or Contractor official or employee involved or knowledgeable about such conduct, identify any documents or substance of any oral communication involved in the conduct, and the estimate in time by which the Government must respond to this notice to minimize cost, delay or disruption of performance.

(2) The Contracting Officer will promptly, within _____ (to be negotiated and inserted into the basic contract at contract award) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer will either:

(i) Confirm that the conduct is in violation and when necessary direct the mode of further performance,

(ii) Countermand any communication regarded as a violation,

(iii) Deny that the conduct constitutes a violation and when necessary direct the mode of further performance; or

(iv) In the event the notice is inadequate to make a decision, advise the Contractor what additional information is required, and establish the date by which it should be furnished by the Contractor and the date thereafter by which the Government will respond.

(End of clause)

[64 FR 30444, June 8, 1999]

1552.242–70 Indirect costs.

As prescribed in 1542.705–70, insert the following clause in all cost-reimbursement type contracts. If ceilings are not being established, enter ''not applicable'' in (c).

INDIRECT COSTS (APR 1984)

(a) In accordance with paragraph (d) of the ''Allowable Cost and Payment'' clause, the final indirect cost rates applicable to this contract shall be established between the Contractor and the appropriate Government representative (EPA, other Government agency, or auditor), as provided by FAR 42.703–1(a). EPA's procedures require a Contracting Officer determination of indirect cost rates for its contracts. In those cases where EPA is the cognizant agency (see FAR 42.705–1), the final rate proposal shall be submitted to the cognizant audit activity and to the following designated Contracting Officer: Environmental Protection Agency, Chief, Cost Policy and Rate Negotiation Branch (3804F), Cost Advisory and Financial Analysis Division, Washington, DC 20460.

Where EPA is not the cognizant agency, the final rate proposal shall be submitted to the above-cited address, to the cognizant audit agency, and to the designated Contracting Officer of the cognizant agency. Upon establishment of the final indirect cost rates, the Contractor shall submit an executed Certificate of Current Cost or Pricing Data (see FAR 15.406–2) applicable to the data furnished in connection with the final rates to the cognizant audit agency. The final rates shall be contained in a written understanding between the Contractor and the appropriate Government representative. Pursuant to the ''Allowable Cost and Payment'' clause, the allowable indirect costs under this contract shall be obtained by applying the final agreed upon rate(s) to the appropriate bases.

(b) Until final annual indirect cost rates are established for any period, the Government shall reimburse the contractor at billing rates established by the appropriate Government representative in accordance with FAR 42.704, subject to adjustment when the final rates are established. The established billing rates are currently as follows:

Cost center	Period	Rate	Base
.....	.....	.....	.....
.....	.....	.....	.....

These billing rates may be prospectively or retroactively revised by mutual agreement, at the request of either the Government or the Contractor, to prevent substantial overpayment or underpayment.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this clause, ceilings are hereby established on indirect costs reimbursable under this contract. The Government shall not be obligated to pay the Contractor any additional amount on account of indirect costs in excess of the ceiling rates listed below:

Cost center	Period	Rate	Base
.....	.....	.....	.....
.....	.....	.....	.....

(End of clause)

[49 FR 8867, Mar. 8, 1984, as amended at 59 FR 18977, Apr. 21, 1994; 64 FR 3876, Jan. 26, 1999]

1552.242–72 Financial administrative contracting officer.

As prescribed in 1542.705 (b), insert the following clause:

FINANCIAL ADMINISTRATIVE CONTRACTING OFFICER (OCT 2000)

(a) A Financial Administrative Contracting Officer (FACO) is responsible for performing certain post-award functions related to the financial aspects of this contract when the EPA is the cognizant federal agency. These functions include the following duties:

(1) Review the contractor's compensation structure and insurance plan.

(2) Negotiate advance agreements applicable to treatment of costs and to Independent Research & Development/Bid and Proposal costs.

(3) Negotiate changes to interim billing rates and establish final indirect cost rates and billing rates.

(4) Prepare findings of fact and issue decisions related to financial matters under the Disputes clause, if appropriate.

(5) In connection with Cost Accounting Standards:

(A) Determine the adequacy of the contractor's disclosure statements;

(B) Determine whether the disclosure statements are in compliance with Cost Accounting Standards and FAR part 31;

(C) Determine the contractor's compliance with Cost Accounting Standards and disclosure statements, if applicable; and

(D) Negotiate price adjustments and execute supplemental agreements under the Cost Accounting Standards clauses at FAR 52.230–3, 52.230–4, and 52.230–5.

(6) Review, approve or disapprove, and maintain surveillance of the contractor's purchasing system.

(7) Perform surveillance, resolve issues, and establish any necessary agreements related to the contractor's cost/schedule control system, including travel policies/procedures, allocation and cost charging methodology, timekeeping and labor distribution policies and procedures, subcontract payment practices, matters concerning relationships between the contractor and its affiliates and subsidiaries, and consistency between bid and accounting classifications.

(8) Review, resolve issues, and establish any necessary agreements related to the contractor's estimating system.

(b) The FACO shall consult with the contracting officer whenever necessary or appropriate and shall forward a copy of all agreements/decisions to the contracting officer upon execution.

(c) The FACO for this contract is:

_____

_____

_____

(End of clause)

[65 FR 58929, Oct. 3, 2000]

1552.245–70 Government property.

As prescribed in 1545.107(a), insert a clause substantially the same as follows:

GOVERNMENT PROPERTY (SEP 2009)

(a) The contractor shall not fabricate or acquire, on behalf of the Government, either directly or indirectly through a subcontract, any item of property without prior written approval from the Contracting Officer. If the Contracting Officer authorizes the contractor to acquire and/or fabricate equipment for use in the performance of this contract, the equipment shall be subject to the provisions of the ''Government Property'' clause and listed on the contract via contract modification.

(b) If the Government provides item(s) of Government property to the contractor for use in the performance of this contract, this property shall be used and maintained by the contractor in accordance with the provisions of the ''Government Property'' clause.

The ''EPA Contract Property Administration Requirements'' provided below apply to this contract.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Contract Property Administration Requirements

1. *Purpose*. This document sets forth the requirements for the U.S. Environmental Protection Agency (EPA) contractors performing Government property management responsibilities under EPA contracts. These requirements supplement those contained in the Government Property clause(s) and Part 45 Government Property of the Federal Acquisition Regulation (FAR).

2. *Contract Property Administration (CPAR)*

a. *EPA Delegation*. EPA delegates all contract property administration to the EPA Contract Property Coordinator (CPC). The delegations apply to all EPA contracts issued with or that have the potential to receive, purchase or acquire Government Property or include the Government Property clauses. In addition to administering all contract property, the CPC provides technical expertise and assistance to the Contracting Officer (CO) and Contracting Officer Technical Representative (COTR) relative to Government Property.

b. *DCMA Re-delegation*. The CPC may request support for contract property management oversight, including property administration and plant clearance, from the Defense Contract Management Agency (DCMA). If DCMA agrees to provide support, DCMA will notify the contractor of the assigned property administrator (PA) and plant clearance officer (PLCO). The DCMA PA is available to the contractor for assistance in all matters of property administration. Notwithstanding the delegation, as necessary, the contractor may contact the EPA CO. In the event of a disagreement between the contractor and the DCMA PA, the contractor should seek resolution from the CO. Unless, otherwise directed in the contract, or this document, all originals of written information or reports, except direct correspondence between the contractor and the DCMA PA, relative to Government property, should be forwarded to the administrative CO assigned to this contract and the CPC.

c. *Disagreements*. Notwithstanding the delegation(s), as necessary, the contractor may contact the CO. In the event of a disagreement between the contractor and the PA or the CPC the contractor should seek resolution from the CO.

3. *Requests for Government Property*.

In accordance with FAR 45.102, the contractor shall furnish all property required for performing Government contracts. If a

contractor believes that Government property is required for performance of the contract, the contractor shall submit a written request to the CO. At a minimum, the request shall contain the following elements:

a. Contract number for which the property is required.

b. An item(s) description, quantity and estimated cost.

c. Certification that no like contractor property exists which could be utilized.

d. A detailed description of the task-related purpose of the property.

e. Explanation of negative impact if property is not provided by the Government.

f. Lease versus purchase analysis shall be furnished with the request to acquire property on behalf of the Government, with the exception of requests for material purchases. The contractor may not proceed with acquisition of property on behalf of the Government until receipt of written authorization from the Contracting Officer.

4. *Transfer of Government Property*. The Contracting Officer initiates the transfer of the government property via a contract modification. The transferor (EPA or another contractor) shall provide to the transferee, the receiving contractor, the information needed to establish and maintain the property records required of FAR 52.245–1, as well as all of the applicable data elements required by Attachment 1 of this clause. The transferee, the receiving contractor, should perform a complete inventory of the property before signing the acceptance document for the property. Accountability will transfer to the receiving contractor upon receipt and acceptance of the property, in accordance with FAR 45.106.

5. *Records of Government Property*.

a. In accordance with FAR 52.245–1, the contractor shall create and maintain records of all Government property, regardless of value, including property provided to and in the possession of a subcontractor. Material provided by the Government or acquired by the contractor and billed as a direct charge to the contract is Government property and records must be established as such.

b. The Contractor shall identify all Superfund property and designate it as such both on the item and on the Government property record. If it is not practicable to tag the item, the contractor shall write the ID number on a tag, card or other entity that may be kept with the item or in a file.

c. Support documentation used for posting entries to the property record shall provide complete, current and auditable data. Entries shall be posted to the record in a timely manner following an action.

d. For Government vehicles, in addition to the data elements required by EPA, the contractor shall also comply with the General Services Administration (GSA) and Department of Energy (DOE) record and report requirements supplied with all EPA provided motor vehicles. If the above requirements were not provided with the vehicle, the contractor shall notify the designated CPC and the Fleet Manager.

e. When Government property is disclosed to be in the management and/or control of the contractor but not provided under any contract, the contractor shall record and report the property in accordance with FAR 52.245–1.

6. *Inventories of Government Property*. The contractor shall conduct a complete physical inventory of EPA property at least once per year. The contractor shall report the results of the inventory, including any discrepancies, to the CO. Reconciliation of discrepancies shall be completed in accordance with the schedule negotiated with the CO. See section 10 herein, Contract Closeout, for information on final inventories.

7. *Reports of Government Property*. EPA requires an annual summary report, for each contract, by contract number, of Government property in the contractor's possession. The annual summary is due as of September 30th of each year, and upon contract termination or expiration.

a. For each classification listed on the EPA Property Report form, with the exception of material, the contractor shall provide the total acquisition cost and total quantity. If there are zero items in a classification, or if there is an ending balance of zero, the classification must be listed with zeros in the quantity and acquisition cost columns.

b. For material, the contractor shall provide the total acquisition cost only.

c. Property classified as Plant Equipment, Superfund and Special Test Equipment must be reported on two separate lines. The first line shall include the total acquisition cost and quantity of all items or systems with a unit acquisition cost of $25,000 or more. The second line shall include the total acquisition cost and quantity of all items with a unit acquisition cost of less than $25,000.

d. For items comprising a system, which is defined as ''a group of interacting items functioning as a complex whole,'' the contractor may maintain the record as a system noting all components of the system under the main component or maintain individual records for each item. However, for the annual report of Government property the components must be reported as a system with one total dollar amount for the system, if that system total is $25,000 or more.

e. The reports are to be received at EPA by the CPC by October 5th of each year.

f. Distribution shall be as follows:

Original to: CPC
One copy: CO

g. Contractors are required to comply with GSA and DOE special reporting requirements

for motor vehicles. A statement of these requirements will be provided by the EPA Facility Management and Services Division (FMSD) concurrent with receipt of each vehicle.

h. The contractor shall provide detailed reports on an as-needed basis, as may be requested by the CO or the CPC.

8. *Disposition of Government Property*. The disposition process is composed of three distinct phases: identification, reporting, and final disposition.

a. *Identification*. The disposition process begins with the contractor identifying Government property that is no longer required for contract performance. Effective contract property management systems provide for identification of excess as it occurs. Once Government property has been determined to be excess to the accountable contract, it must be screened against the contractor's other EPA contracts for further use. If the property may be reutilized, the contractor shall notify the CO in writing. Government property will be transferred via contract modifications to other contracts only when the COs on both the current contract and the receiving contract authorize the transfer.

b. *Reporting*.

(i) *EPA*. Government property shall be reported in accordance with FAR 52.245–1. The Standard Form, SF 1428, Inventory Disposal Schedule, provides the format for reporting excess Government property. Instructions for completing and when to use the form may be found at FAR 52.245–1(j). Forward the completed SF 1428 to the CPC. The SF 1428 is available at *http://www.arnet.gov/far/current/html/FormsStandard54.html*. Superfund property must contain a Superfund notification and the following language must be displayed on the form: ''Note to CO: Reimbursement to the EPA Superfund is required.''

(ii) *DCMA*. If the EPA contract has been re-delegated to DCMA, the excess items will be entered into the Plant Clearance Automated Reutilization Screening System (PCARSS). Access and information pertaining to this system may be addressed to the DCMA Plant Clearance Officer (PLCO).

c. *Disposition Instructions*.

(i) *Retention*. When Government property is identified as excess, the CO may direct the contractor in writing to retain all or part of the excess Government Property under the current contract for possible future requirements.

(ii) *Return to EPA*. When Government property is identified as excess, the CO may direct the contractor in writing to return those items to EPA inventory. The contractor shall ship/deliver the property in accordance with the instructions provided by the CO.

(iii) *Transfer*. When Government property is identified as excess, the CO may direct the contractor in writing to transfer the property to another EPA contractor. The contractor shall transfer the property by shipping it in accordance with the instructions provided by the CO. To effect transfer of accountability, the contractor shall provide the recipient of the property with the applicable data elements set forth in Attachment 1 of this clause.

(iv) *Sale*. If GSA or the DCMA PLCO conducts a sale of the excess Government property, the contractor shall allow prospective bidders access to property offered for sale.

(v) *Abandonment*. Abandoned property must be disposed of in a manner that does not endanger the health and safety of the public. If the contract is delegated to DCMA and the contractor has input EPA property into the PCARSS system, the EPA Property Utilization Officer (PUO) shall notify the CO. The CO shall notify the contractor in writing of those items EPA would like to retain, have returned or transferred to another EPA contractor. The contractor shall notify the DCMA PLCO and request withdrawal of those items from the inventory schedule. The contractor shall update the Government property record to indicate the disposition of the item and to close the record. The contractor shall also obtain either a signed receipt or proof of shipment from the recipient. The contractor shall notify the CO when all actions pertaining to disposition have been completed. The contractor shall complete an EPA Property report with changes, to include supporting documentation of completed disposition actions and submit it to the CPC.

9. *Decontamination*. In addition to the requirements of the ''Government Property'' clause and prior to performing disposition of any EPA Government Property, the contractor shall certify in writing that the property is free from contamination by any hazardous or toxic substances.

10. *Contract Closeout*. The contractor shall complete a physical inventory of all Government property at contract completion and the results, including any discrepancies, shall be reported to the CO. If the contract is delegated to DCMA, the physical inventory report will be submitted to the EPA CO and a copy submitted to the DCMA PA. In the case of a terminated contract, the contractor shall comply with the inventory requirements set forth in the applicable termination clause. The results of the inventory, as well as a detailed inventory listing, must be forwarded to the CO and if delegated, a copy to the DCMA PA. In order to expedite the disposal process, contractors may be required to, or may elect to submit to the CPC, an inventory schedule for disposal purposes up to six (6) months prior to contract completion. If such an inventory schedule is prepared, the contractor must indicate the earliest date that each item may be disposed. The contractor shall update all property

records to show disposal action. The contractor shall notify the CO, and, if delegated, the DCMA PA, in writing, when all work has been completed under the contract and all Government property accountable to the contract has been disposed. The contractor shall complete a FINAL EPA Property report with all supporting documentation to the CPC.

ATTACHMENT 1

Required Data Element—In addition to the requirements of FAR 52.245–1(f)(vi), Reports of Government Property, the contractor is required to maintain, and report the following data elements for EPA Government property (all elements are not applicable to material): Name and address of the administrative Contracting Officer; Name of the contractor representative; Business type; Name and address of the contract property coordinator; Superfund (Yes/No); No. of Subcontractor/Alternate Locations.

NOTE: For items comprising a system which is defined as, ''a group of interacting items functioning as a complex whole,'' the contractor may maintain the record as a system noting all components of the system under the main component or maintain individual records for each item. However, for the Annual Report of Government Property, the components must be reported as a system with one total dollar amount for the system, if that system total is $25,000 or more.

(End of clause)

[74 FR 47110, Sept. 15, 2009, as amended at 78 FR 46291, July 31, 2013]

1552.245–71 Government-furnished data.

As prescribed in 1545.107(b), insert the following contract clause in any contract that the Government is to furnish the Contractor data. Identify in the clause the data to be provided.

GOVERNMENT-FURNISHED DATA (SEP 2009)

(a) The Government shall deliver to the Contractor the Government-furnished data described in the contract. If the data, suitable for its intended use, is not delivered to the Contractor, the Contracting Officer shall equitably adjust affected provisions of this contract in accordance with the ''Changes'' clause when:

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(b) Title to Government-furnished data shall remain in the Government.

(c) The Contractor shall use the Government-furnished data only in connection with this contract.

(d) The following data will be furnished to the Contractor on or about the time indicated:

(End of clause)

[74 FR 47112, Sept. 15, 2009, as amended at 78 FR 46292, July 31, 2013]

PART 1553—FORMS

Sec.
1553.000 Scope of part.

Subpart 1553.2—Prescription of Forms

1553.213 Small purchases and other simplified purchase procedures.
1553.213–70 EPA Form 1900–8, Procurement Request/Order.
1553.216 Types of contracts.
1553.216–70 EPA Form 1900–41A, CPAF Contract Summary of Significant Performance Observation.
1553.216–71 EPA Form 1900–41B, CPAF Contract Individual Performance Event.
1553.232 Contract financing.
1553.232–70 EPA Form 1900–3, Assignee's Release.
1553.232–71 EPA Form 1900–4, Assignee's Assignment of Refunds, Rebates, Credits and Other Amounts.
1553.232–72 EPA Form 1900–5, Contractor's Assignment of Refunds, Rebates, and Credits.
1553.232–73 EPA Form 1900–6, Contractor's Release.
1553.232–74 EPA Form 1900–10, Contractor's Cumulative Claim and Reconciliation.
1553.232–75 EPA Form 1900–68, notice of contract costs suspended and/or disallowed.
1553.232–76 [Reserved]

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

SOURCE: 49 FR 8886, Mar. 8, 1984, unless otherwise noted.

EDITORIAL NOTE: Forms referenced in part 1553 do not appear in the Code of Federal Regulations.

1553.000 Scope of part.

This part prescribes Agency forms for use in acquisitions and contains requirements and information generally applicable to the forms.

Subpart 1553.2—Prescription of Forms

1553.213 Small purchases and other simplified purchase procedures.

1553.213–70 EPA Form 1900–8, Procurement Request/Order.

As prescribed in 1513.505–2, EPA Form 1900–8 may be used in lieu of Optional Forms 347 and 348 for individual purchases.

1553.216 Types of contracts.

1553.216–70 EPA Form 1900–41A, CPAF Contract Summary of Significant Performance Observation.

As prescribed in 1516.404–278, EPA Form 1900–41A shall be used to document significant performance observations under CPAF contracts.

1553.216–71 EPA Form 1900–41B, CPAF Contract Individual Performance Event.

As prescribed in 1516.404–278, EPA Form 1900–41B shall be used to document individual performance events under CPAF contracts.

1553.232 Contract financing.

1553.232–70 EPA Form 1900–3, Assignee's Release.

As prescribed in 1532.805–70(a), the EPA Form 1900–3 is required to be submitted by the assignee for cost-reimbursement contracts prior to final payment under the contract.

1553.232–71 EPA Form 1900–4, Assignee's Assignment of Refunds, Rebates, Credits and Other Amounts.

As prescribed in 1532.805–70(b), the EPA Form 1900–4 must accompany the assignee's release prior to final payment under cost-reimbursement contracts.

1553.232–72 EPA Form 1900–5, Contractor's Assignment of Refunds, Rebates, and Credits.

As prescribed in 1532.805–70(c), the EPA Form 1900–5 must be prepared by the Contractor prior to final payment under cost-reimbursement contracts and must accompany the Contractor's release.

1553.232–73 EPA Form 1900–6, Contractor's Release.

As prescribed in 1532.805–70(d), the EPA Form 1900–6 must be submitted by the Contractor under cost-reimbursement contracts prior to final payment thereunder.

1553.232–74 EPA Form 1900–10, Contractor's Cumulative Claim and Reconciliation.

As prescribed in 1532.170(a), the EPA Form 1900–10 shall be used for an accounting of the cumulative charges and costs for cost-reimbursement contracts from the inception of the contract to completion. It shall be submitted by the Contractor along with the completion voucher.

1553.232–75 EPA Form 1900–68, notice of contract costs suspended and/or disallowed.

As prescribed in 1532.170(b), the Contracting Officer shall insert EPA Form 1900–68 in all cost-reimbursement type and fixed-rate type contracts.

[61 FR 29318, June 10, 1996]

1553.232–76 [Reserved]

PARTS 1554–1599 [RESERVED]

CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATION

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SUBCHAPTER A—GENERAL

PART 1600 [RESERVED]

PART 1601—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 1601.1—Purpose, Authority, Issuance

Sec.
1601.101 Purpose.
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1601.106 OMB approval under the Paperwork Reduction Act.

Subpart 1601.3—Agency Acquisition Regulation (FEHBAR)

1601.301 Policy.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16037, May 1, 1987, unless otherwise noted.

Subpart 1601.1—Purpose, Authority, Issuance

1601.101 Purpose.

(a) This subpart establishes chapter 16, Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation, within title 48, the Federal Acquisition Regulation System, of the Code of Federal Regulations. The short title of this regulation shall be FEHBAR.

(b) The purpose of the FEHBAR is to implement and supplement the Federal Acquisition Regulation (FAR) specifically for acquiring and administering contracts with health insurance carriers in the Federal Employees Health Benefits Program (FEHBP).

1601.102 Authority.

(a) The FEHBAR is issued by the Director of the Office of Personnel Management in accordance with the authority of 5 U.S.C. chapter 89 and other applicable law and regulation.

(b) The FEHBAR does not replace or incorporate regulations found at 5 CFR part 890, which provides the substantive policy guidance for administration of the FEHBP under 5 U.S.C. Chapter 89. The following is the order of precedence in interpreting a contract provision under the FEHBP:

(1) 5 U.S.C. Chapter 89;
(2) 5 CFR part 890;
(3) 48 CFR Chapters 1 and 16;
(4) The FEHBP contract.

[52 FR 16037, May 1, 1987, as amended at 59 FR 14764, Mar. 30, 1994]

1601.103 Applicability.

The FAR is generally applicable to contracts negotiated in the FEHBP pursuant to 5 U.S.C. chapter 89. The FEHBAR implements and supplements the FAR where necessary to identify basic and significant acquisition policies unique to the FEHBP.

1601.104 Issuance.

1601.104–1 Publication and code arrangement.

(a) The FEHBAR and its subsequent changes are published in

(1) Daily issues of the FEDERAL REGISTER; and

(2) Cumulative form of the Code of Federal Regulations.

(b) The FEHBAR is issued as chapter 16 of title 48 of the Code of Federal Regulations.

1601.104–2 Arrangement of regulation.

(a) *General*. The FEHBAR conforms with the arrangement and numbering system prescribed by FAR 1.104. However, when a FAR part or subpart is adequate for use without further OPM implementation or supplementation, there will be no corresponding FEHBAR part, subpart, etc. The FEHBAR is to be used in conjunction with the FAR and the order for use is:

(1) FAR;
(2) FEHBAR.

(b) *Citation*. (1) In formal documents, such as legal briefs, citation of chapter 16 material that has been published in the FEDERAL REGISTER will be to title 48 of the Code of Federal Regulations.

(2) In informal documents, any section of chapter 16 may be identified as

''FEHBAR'' followed by the section number.

1601.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply.

Provision	Control No.
FEHBAR 1604.705	3206–0145
FAR 9.1	3206–0145

[52 FR 16037, May 1, 1987. Redesignated at 70 FR 31378, June 1, 2005]

Subpart 1601.3—Agency Acquisition Regulation (FEHBAR)

1601.301 Policy.

(a) Procedures, contract clauses, and other aspects of the acquisition process for contracts in the FEHBP shall be consistent with the principles of the FAR. Changes to the FAR that are otherwise authorized by statute or applicable regulation, dictated by the practical realities associated with the unique nature of health care procurements, or necessary to satisfy specific needs of the Office of Personnel Management shall be implemented as amendments to the FEHBAR and published in the FEDERAL REGISTER, or as deviations to the FAR in accordance with FAR subpart 1.4.

(b) Internal procedures, instructions, and guides that are necessary to clarify or implement the FEHBAR *within* OPM may be issued by agency officials specifically designated by the Director, OPM. Normally, such designations will be specified in the OPM Administrative Manual, which is routinely available to agency employees and will be made available to interested outside parties upon request. Clarifying or implementing procedures, instructions, and guides issued pursuant to this section of the FEHBAR must—

(1) Be consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time; and

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable.

PART 1602—DEFINITIONS OF WORDS AND TERMS

Sec.
1602.000–70 Scope of part.

Subpart 1602.1—Definitions of FEHBP Terms

1602.170 Definition of terms.
1602.170–1 Carrier.
1602.170–2 Community rate.
1602.170–3 Comprehensive medical plan.
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1602.170–12 OPM.
1602.170–13 Similarly sized subscriber groups.
1602.170–14 FEHB-specific medical loss ratio threshold calculation.
1602.170–15 Subcontractor.
1602.170–16 Large Provider Agreement.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16038, May 1, 1987, unless otherwise noted.

1602.000–70 Scope of part.

This part defines words and terms commonly used in this regulation.

Subpart 1602.1—Definitions of FEHBP Terms

1602.170 Definition of terms.

In this chapter, unless otherwise indicated, the following terms have the meaning set forth in this subpart.

1602.170–1 Carrier.

Carrier means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, delivering, paying for, or reimbursing the cost of health care services under group insurance policies or contracts,

medical or hospital service agreements, membership or subscription contracts, including a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services, in consideration of premiums or other periodic charges payable to the carrier.

[62 FR 47573, Sept. 10, 1997]

1602.170–2 Community rate.

(a) *Community rate* means a rate of payment based on a per member per month capitation rate or its equivalent that applies to a combination of the subscriber groups for a comprehensive medical plan carrier. References in this subchapter to ''a combination of cost and price analysis'' relating to the applicability of policy and contract clauses refer to comprehensive medical plan carriers using community rates.

(b) *Adjusted community rate* means a community rate which has been adjusted for expected use of medical resources of the FEHBP group. An adjusted community rate is a prospective rate and cannot be retroactively revised to reflect actual experience, utilization, or costs of the FEHBP group, except as described in §1615.402(c)(4).

[55 FR 27414, July 2, 1990, as amended at 62 FR 47573, Sept. 10, 1997; 76 FR 38284, June 29, 2011]

1602.170–3 Comprehensive medical plan.

Comprehensive Medical Plan means a plan as defined under 5 U.S.C. 8903(4).

1602.170–4 Contractor.

Contractor means carrier.

1602.170–5 Cost or pricing data.

(a) *Experience-rated carriers.* Cost or pricing data for experience-rated carriers includes:

(1) Information such as claims data;

(2) Actual or negotiated benefits payments made to providers of medical services for the provision of healthcare, such as capitation not adjusted for specific groups, including mental health benefits capitation rates, per diems, and Diagnostic Related Group (DRG) payments;

(3) Cost data;

(4) Utilization data; and

(5) Administrative expenses and retentions, including capitated administrative expenses and retentions.

(b) *Community rated carriers.* Cost or pricing data for community rated carriers is the specialized rating data used by carriers in computing a rate that is appropriate for the Federal group and similarly sized subscriber groups (SSSGs). Such data include, but are not limited to, capitation rates; prescription drug, hospital, and office visit benefits utilization data; trend data; actuarial data; rating methodologies for other groups; standardized presentation of the carrier's rating method (age, sex, etc.) showing that the factor predicts utilization; tiered rates information; ''step-up'' factors information; demographics such as family size; special benefit loading capitations; and adjustment factors for capitation. After the 2012 plan year, reconciled rates for community rated carriers, other than those required by state law to use Traditional Community Rating (TCR), will be required to meet an FEHB-specific medical loss ratio threshold published annually in OPM's rate instructions to FEHB carriers.

[62 FR 47574, Sept. 10, 1997, as amended at 70 FR 31378, June 1, 2005; 76 FR 38285, June 29, 2011]

1602.170–6 Director.

Director means the Director of the Office of Personnel Management.

[52 FR 16038, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

1602.170–7 Experience-rate.

Experience-rate means a rate for a given group that is the result of that group's actual paid claims, administrative expenses (including capitated administrative expenses), retentions, and estimated claims incurred but not reported, adjusted for benefit modifications, utilization trends, and economic trends. Actual paid claims include any actual or negotiated benefits payments made to providers of services for the provision of healthcare such as capitation not adjusted for specific groups,

including mental health benefits capitation rates, per diems, and DRG payments.

[70 FR 31378, June 1, 2005]

1602.170–8 FEHBP.

FEHBP means the Federal Employees Health Benefits Program.

[52 FR 16038, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

1602.170–9 Health benefits plan.

Health benefits plan means a group insurance policy, contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangements provided by a carrier for the purpose of providing, arranging for, delivering, paying for, or reimbursing any of the costs of health care services.

[62 FR 47574, Sept. 10, 1997]

1602.170–10 Letter of credit.

Letter of credit means the method by which certain carriers, and their underwriters if authorized, receive recurring premium payments and contingency reserve payments by drawing against a commitment (certified by a responsible OPM official) which specifies a dollar amount available. For each carrier participating in the letter of credit arrangement for payment under this part, the terms ''carrier reserves,'' and ''special reserves'' include any balance in the carrier's letter of credit account.

[53 FR 51783, Dec. 23, 1988, as amended at 57 FR 14359, Apr. 20, 1992. Redesignated at 62 FR 47574, Sept. 10, 1997]

1602.170–11 Negotiated benefits contracts.

Negotiated benefits contracts are FEHBP contracts in which benefits provided and subscription income are based on either community rating or experience rating.

[62 FR 47574, Sept. 10, 1997]

1602.170–12 OPM.

OPM means the Office of Personnel Management.

[52 FR 16038, May 1, 1987. Redesignated at 53 FR 51783, Dec. 23, 1988 and further redesignated at 62 FR 47574, Sept. 10, 1997]

1602.170–13 Similarly sized subscriber groups.

(a) *Similarly sized subscriber groups* (SSSGs) are a comprehensive medical plan carrier's two employer groups that:

(1) As of the date specified by OPM in the rate instructions, have a subscriber enrollment closest to the FEHBP subscriber enrollment; and,

(2) Use any rating method other than retrospective experience rating; and,

(3) Meet the criteria specified in the rate instructions issued by OPM.

(b) Any group with which an FEHB carrier enters into an agreement to provide health care services is a potential SSSG (including separate lines of business, government entities, groups that have multi-year contracts, and groups having point-of-service products).

(c) Exceptions to the general rule stated in paragraph (b) of this section are (and the following groups must be excluded from SSSG consideration):

(1) Groups the carrier rates by the method of retrospective experience rating;

(2) Groups consisting of the carrier's own employees;

(3) Medicaid groups, Medicare groups, and groups that have only a stand alone benefit (such as dental only);

(4) A purchasing alliance whose rate-setting is mandated by the State or local government.

(d) OPM shall determine the FEHBP rate by selecting the lower of the two rates derived by using rating methods consistent with those used to derive the SSSG rates.

[62 FR 47574, Sept. 10, 1997]

1602.170–14 FEHB-specific medical loss ratio threshold calculation.

(a) *Medical Loss Ratio* (MLR) means the ratio of plan incurred claims, including the issuer's expenditures for activities that improve health care quality, to total premium revenue determined by OPM, as defined by the Department of Health and Human Services in 45 CFR part 158.

(b) The FEHB-specific MLR will be calculated on an annual basis. This FEHB-specific MLR will be measured against an FEHB-specific MLR threshold to be put forth by OPM no later

than 12 calendar months before the beginning of plan years 2014 and beyond. OPM will publish the FEHB-specific MLR threshold no later than 8 months before the beginning of plan year 2013.

(c) In place of the credibility adjustment at 45 CFR 158.230–158.232, OPM will set a separate credibility adjustment to account for the special circumstances of small FEHB plans in annual rate instructions to carriers.

[77 FR 19524, Apr. 2, 2012]

1602.170–15 Subcontractor.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor, except for providers of direct medical services or supplies pursuant to the Carrier's health benefits plan.

[52 FR 16038, May 1, 1987. Redesignated at 53 FR 51783, Dec. 23, 1988, and further redesignated at 55 FR 27414, July 2, 1990; 62 FR 47574, Sept. 10, 1997 and 76 FR 38285, June 29, 2011]

1602.170–16 Large Provider Agreement.

(a) *Large Provider Agreement* means an agreement between—

(1) An FEHB carrier, at least 25 percent of which total contracts are FEHB enrollee contracts, and

(2) A vendor of services or supplies such as mail order pharmacy services, pharmacy benefit management services, mental health and/or substance abuse management services, preferred provider organization services, utilization review services, and/or large case or disease management services. This representative list includes organizations that own or contract with direct providers of healthcare or supplies, or organizations that process claims or manage patient care. A hospital is not considered to be a vendor for purposes of this chapter.

(i) Where the total costs charged to the FEHB carrier for a contract term for FEHB members, including benefits and services, are reasonably expected to exceed 5 percent of the carrier's total FEHB benefits costs, or

(ii) Where the total administrative costs charged to the FEHB carrier for the contract term for FEHB members are reasonably expected to exceed 5 percent of the carrier's total FEHB administrative costs (applicable to agreements where the provider is not responsible for FEHB benefits costs).

(3) As used in this section, the term ''carrier'' does not include local health plans that serve under an umbrella arrangement with an FEHB carrier.

(b) The FEHB Program Annual Accounting Statement for the FEHB Plan for the prior contract year will be used to determine the 5 percent threshold under Large Provider Agreements.

(c) Large Provider Agreements based on cost analysis are subject to the provisions of FAR 52.215–2, ''Audit and Records-Negotiation.''

(d) Large Provider Agreements based on price analysis are subject to the provisions of 48 CFR 1646.301 and 1652.246–70.

[70 FR 31379, June 1, 2005. Redesignated at 76 FR 38285, June 29, 2011]

PART 1603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1603.70—Misleading, Deceptive, or Unfair Advertising

Sec.
1603.7001 Policy.
1603.7002 Additional guidelines.
1603.7003 Contract clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16039, May 1, 1987, unless otherwise noted.

Subpart 1603.70—Misleading, Deceptive, or Unfair Advertising

1603.7001 Policy.

(a) OPM prepares and distributes or makes available to Federal employees and annuitants a comparison booklet which presents summary information and a benefits brochure which details benefits, limitations, and premium rates for all participating plans. OPM does not encourage, support, or reimburse participating carriers for the costs of advertisements. However, while OPM believes that advertising is unnecessary, it recognizes that the decision to use advertising rests with each carrier.

(b) OPM discourages advertising that is misleading or deceptive. This includes advertising that is directed at other carriers' plans participating in the Program and which uses incomplete or inappropriate comparisons or disparaging or minimizing techniques. Such unfair practices are prejudicial to the interests of the vast majority of carriers whose advertising is fair and accurate.

(c) Failure to conform to the requirements of this subpart shall be a material breach of the contract and may result in withdrawal of approval to continue participation in the FEHB Program.

[52 FR 16039, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

1603.7002 Additional guidelines.

Any advertisements which identify a carrier's participation in the FEHBP shall—

(a) Be limited to the merits of the carrier's FEHBP plan and shall be limited to factual statements of the benefits and rates offered by that plan. The official document for benefit and rate comparisons among FEHBP plans is the comparison chart issued by OPM.

(b) Not use the FEHBP logo.

(c) Recognize that the officially approved plan brochure is the sole contractual statement of benefits, limitations, and exclusions. All advertisements that in any way discuss plan benefits shall contain the following statement:

This is a summary (or brief description) of the features of the (plan's name). Before making a final decision, please read the plan's officially approved brochure, (brochure number). All benefits are subject to the definitions, limitations, and exclusions set forth in the official brochure.

(d) Set forth the rates for the plan, if the advertisements discuss benefits.

(e) Not give instructions on enrollment. Statements on enrollment procedures, requirements, or eligibility shall be limited to those such as:

To sign up, fill out a Health Benefits Registration Form (Standard Form 2809) from your personnel office indicating the enrollment you want:

The enrollment codes for (plan's name) are:

Self Only __ Enrollment Code _____

Self and Family __ Enrollment Code _____

The form must then be returned to your personnel office before the (date) deadline. Your (plan's name) coverage will begin the first pay period in January, (year). If you are a retired Federal employee and need forms, contact the Office of Personnel Management at P.O. Box 809, Washington, DC 20044.

[52 FR 16039, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

1603.7003 Contract clause.

The clause at 1652.203–70 shall be inserted in all FEHBP contracts.

[52 FR 16039, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

PART 1604—ADMINISTRATIVE MATTERS

Subpart 1604.7—Contractor Records Retention

Sec.
1604.703 Policy.
1604.705 Specific retention periods.

Subpart 1604.9—Taxpayer Identification Number

1604.970 Taxpayer Identification Number.

Subpart 1604.70—Coordination of Benefits

1604.7001 Coordination of benefits clause.

Subpart 1604.71—Disputed Health Benefit Claims

1604.7101 Filing health benefit claims/court review of disputed claims.

Subpart 1604.72—Large Provider Agreements

1604.7201 FEHB Program Large Provider Agreements.
1604.7202 Large Provider Agreement clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16039, May 1, 1987, unless otherwise noted.

Subpart 1604.7—Contractor Records Retention

1604.703 Policy.

In view of the unique payment schedules of FEHBP contracts and the compelling need for records retention periods sufficient to protect the Government's interest, contractors shall be required to maintain records for periods determined in accordance with the provisions of FAR 4.703(b)(1).

1604.705 Specific retention periods.

Unless the contracting officer determines that there exists a compelling reason to include only the contract clause specified by FAR 52.215–2 ''Audit & Records—Negotiation,'' the contracting officer shall insert the clause at 1652.204–70 in all FEHBP contracts.

[52 FR 16039, May 1, 1987, as amended at 62 FR 47574, Sept. 10, 1997]

Subpart 1604.9—Taxpayer Identification Number

SOURCE: 65 FR 36386, June 8, 2000, unless otherwise noted.

1604.970 Taxpayer Identification Number.

Insert the clause at section 1652.204–73 in all FEHBP contracts.

Subpart 1604.70—Coordination of Benefits

1604.7001 Coordination of benefits clause.

OPM expects all FEHBP plans to coordinate benefits. Accordingly, the clause set forth at 1652.204–71 shall be inserted in all FEHBP contracts.

Subpart 1604.71—Disputed Health Benefit Claims

1604.7101 Filing health benefit claims/court review of disputed claims.

Guidelines for a Federal Employees Health Benefit (FEHB) Program covered individual to file a claim for payment or service and for legal actions on disputed health benefit claims are found at 5 CFR 890.105 and 890.107, respectively. The contract clause at 1652.204–72 of this chapter, reflecting this guidance, must be inserted in all FEHB Program contracts.

[61 FR 15198, Apr. 5, 1996]

Subpart 1604.72—Large Provider Agreements

SOURCE: 70 FR 31379, June 1, 2005, unless otherwise noted.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1604.7201 FEHB Program Large Provider Agreements.

The following provisions apply to all experience-rated carriers participating in the FEHB Program:

(a) *Notification and information requirements.* (1) All experience-rated carriers must provide notice to the contracting officer of their intent to enter into or to make a significant modification to a Large Provider Agreement. Significant modification means a 20% increase or more in the amount of the Large Provider Agreement:

(i) Not less than 60 days before entering into any Large Provider Agreement; and

(ii) Not less than 60 days before exercising renewals or other options, or making a significant modification.

(2) The carrier's notification to the contracting officer must be in writing and must, at a minimum:

(i) Describe the supplies and/or services the proposed provider agreement will require;

(ii) Identify the proposed basis for reimbursement;

(iii) Identify the proposed provider agreement, explain why the carrier selected the proposed provider, and, where applicable, what contracting method it used, including the kind of competition obtained;

(iv) Describe the methodology the carrier used to compute the provider's profit; and, (v) Describe the provider risk provisions.

(3) The contracting officer may request from the carrier any additional information on a proposed provider agreement and its terms and conditions prior to a Large Provider award and during the performance of the agreement.

(4) Within 30 days of receiving the carrier's notification, the contracting officer will either give the carrier written comments or written notice that there will be no comments. If the contracting officer comments, the carrier must respond in writing within 10 calendar days and explain how it intends to address any concerns.

(5) When computing the carrier's annual service charge, the contracting officer will consider how well the carrier complies with the provisions of this section, including the advance notification requirements, as an aspect of the carrier's performance factor.

(6) The contracting officer's review of any Large Provider agreement, option, renewal, or modification will not constitute a determination of the acceptability of terms or conditions of any provider agreement or the allowability of any costs under the carrier's contract, nor will it relieve the carrier of any responsibility for performing the contract.

(b) *Records and inspection*. The carrier must insert in all Large Provider Agreements the requirement that the provider will retain and make available to the Government all records relating to the agreement as follows:

(1) Records that support the annual statement of operations—Retain for 6 years after the agreement term ends.

(2) Enrollee records, if applicable—Retain for 6 years after the agreement term ends.

(c) Large Provider Agreements based on cost analysis are subject to the provisions of FAR 52.215–2, ''Audit and Records-Negotiation.''

(d) Large Provider Agreements based on price analysis are subject to the provisions of 48 CFR 1646.301 and 1652.246–70.

1604.7202 Large Provider Agreement clause.

The contracting officer will insert the clause set forth at section 1652.204–74 in all experience-rated FEHB Program contracts.

SUBCHAPTER B—ACQUISITION PLANNING

PART 1605—PUBLICIZING CONTRACT ACTIONS

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1605.000 Applicability.

FAR part 5 has no practical application to the FEHBP because OPM does not issue solicitations. Eligible contractors (i.e., qualified health benefits carriers) are identified in accordance with 5 U.S.C. 8903. Offerors voluntarily come forth in accordance with procedures provided in 5 CFR part 890.

[52 FR 16039, May 1, 1987]

PART 1606—COMPETITION REQUIREMENTS

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1606.001 Applicability.

FAR part 6 has no practical application to FEHBP contracts in view of the statutory exception provided by 5 U.S.C. 8902.

[52 FR 16039, May 1, 1987]

PART 1609—CONTRACTOR QUALIFICATIONS

Subpart 1609.4—Debarment, Suspension, and Ineligibility

Sec.

1609.470 Notification of Debarment, Suspension, and Ineligibility.
1609.471 Contractor certification.

Subpart 1609.70—Minimum Standards for Health Benefits Carriers

1609.7001 Minimum standards for health benefits carriers.

Subpart 1609.71—Performance Evaluation

1609.7101 Policy.
1609.7101–1 Community-rated carrier incentive performance elements.
1609.7101–2 Community-rated carrier performance factors.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1609.4—Debarment, Suspension, and Ineligibility

SOURCE: 59 FR 14764, Mar. 30, 1994, unless otherwise noted.

1609.470 Notification of Debarment, Suspension, and Ineligibility.

(FAR) 48 CFR, part 9, subpart 9.4 is supplemented as set out in the certification required in 1609.471 by converting the FAR ''offeror's'' certification at (FAR) 48 CFR 52.209–5 into a carrier's certification. This change reflects the FEHBP's statutory exemption from competitive bidding (5 U.S.C. 8902), which obviates the issuance of solicitations.

1609.471 Contractor certification.

All FEHBP carriers and applicant carriers are required to submit the following certification. Applicant carriers must submit the certification prior to OPM's determination on the application for approval to participate in the FEHBP. Current carriers must submit the certification once, along with their benefit and rate proposals for the 1995 contract year.

DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

The Carrier certifies, to the best of its knowledge and belief, that—

(a) The Carrier and/or any of its Principals—

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

(2) Have ( ) have not ( ), within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(3) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of

any of the offenses enumerated in subdivision (a)(2) of this clause.

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

(b) *Principals,* for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the Carrier subject to prosecution under section 1001, title 18, United States Code.

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

(d) A Carrier's certification that any of the actions mentioned in the certification exists will not necessarily result in termination of the contract. However, the certification, or the Carrier's failure to provide such additional information as requested by the Contracting Officer, will be considered in connection with a determination of the Carrier's responsibility under subpart 1609.70, Minimum Standards for Health Benefits Carriers.

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

(f) The certification in this section is a material representation of fact upon which reliance is placed by the Contracting Officer. If it is later determined that the Carrier knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract for default.

Carrier Name: _____

_____

Name of Chief Executive Officer

Date signed: _____

(End of certificate)

Subpart 1609.70—Minimum Standards for Health Benefits Carriers

1609.7001 Minimum standards for health benefits carriers.

(a) The carrier of an approved health benefits plan shall meet the requirements of chapter 89 of title 5, United States Code; part 890 of title 5, Code of Federal Regulations; chapter 1 of title 48, Code of Federal Regulations, and the following standards. The carrier shall continue to meet the requirements of chapter 89 of title 5, United States Code, and the standards cited in this paragraph while under contract with OPM. Failure to meet these requirements and standards is cause for OPM's withdrawal of approval of the health benefits carrier and termination of the contract in accordance with 5 CFR 890.204.

(1) It must be lawfully engaged in the business of supplying health benefits.

(2) It must have, in the judgement of OPM, the financial resources and experience in the field of health benefits to carry out its obligations under the plan.

(3) It must keep such reasonable financial and statistical records, and furnish such reasonable financial and statistical reports with respect to the plan, as may be requested by OPM.

(4) It must permit representatives of OPM and of the General Accounting Office to audit and examine its records and accounts which pertain, directly or indirectly, to the plan at such reasonable times and places as may be designated by OPM or the General Accounting Office.

(5) It must accept, subject to adjustment for error or fraud, in payment of its charges for health benefits for all enrollees in its plan, the enrollment charges received by the Employees Health Benefits (EHB) Fund less amounts set aside for the administrative and contingency reserves prescribed in 5 CFR 890.503. OPM makes available or pays the amounts within 30 days of receipt by the EHB Fund.

(6) A carrier that is an employee organization must continue coverage, without requirement of membership, of

any eligible survivor annuitants, former spouses continuing coverage with the carrier under 5 CFR 890.803, children temporarily continuing coverage with the carrier under 5 CFR 890.1103(a)(2), or former spouses temporarily continuing coverage with the carrier under 5 CFR 890.1103(a)(3).

(7) It must timely submit to OPM a properly completed and signed novation or change-of-name agreement in accordance with subpart 1642.12 of this chapter.

(b) In addition to the standards in paragraph (a) of this section, the carrier must perform the contract in accordance with prudent business practices. A carrier's sustained poor business practice in the management or administration of a health benefits plan is cause for OPM's withdrawal of approval of the health benefits carrier and termination of the carrier's contract. Prudent business practices include, but are not limited to, the following:

(1) Timely compliance with OPM instructions and directives.

(2) Legal and ethical business and health care practices.

(3) Compliance with the terms of the FEHB contract, regulations and statutes.

(4) Timely and accurate adjudication of claims or rendering of medical services.

(5) A system for accounting for costs incurred under the contract, when required, which includes segregating and pricing FEHB medical utilization and allocating indirect and administrative costs in a reasonable and equitable manner.

(6) Accurate accounting reports of actual, allowable, allocable, and reasonable costs incurred in the administration of the contract.

(7) Application of performance standards for assuring contract quality as required by 1646.270(d).

(8) Establishment and maintenance of a system of internal control that provides reasonable assurance that:

(i) The provision and payments of benefits and other expenses are in compliance with legal, regulatory, and contractual guidelines;

(ii) FEHB funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and,

(iii) Data are accurately and fairly disclosed in all reports required by OPM.

(c) The following types of activities are examples of poor business practices which adversely affect the health benefits carrier's responsibility under its contract. A pattern of poor conduct or evidence of misconduct in these areas is cause for OPM to withdraw approval of the carrier:

(1) Presenting false claims by charging expenses to the contract which according to the contract terms are not chargeable to the contract;

(2) Using fraudulent or unethical business or health care practices or otherwise displaying a lack of business integrity or honesty;

(3) Repeatedly and knowingly providing false or misleading information in the rate setting process;

(4) Repeated failure to comply with OPM instructions and directives;

(5) Having an accounting system that is incapable of separately accounting for costs incurred under the contract and/or that lacks the internal controls necessary to fulfill the terms of the contract; and

(6) Failure to assure that the plan provides properly paid or denied claims, or providing medical services which are inconsistent with standards of good medical practice.

(7) Entering into contracts or employment agreements with providers, provider groups, or health care workers that include provisions or financial incentives that directly or indirectly create an inducement to limit or restrict communication about medically necessary services to any individual covered under the FEHB Program. Financial incentives are defined as bonuses, withholds, commissions, profit sharing or other similar adjustments to basic compensation (e.g., service fee, capitation, salary) which have the effect of limiting or reducing communication about appropriate medically necessary services. Providers, health care workers, or health plan sponsoring organizations are not required to discuss treatment options that they would not ordinarily discuss in their customary course of practice because such options

are inconsistent with their professional judgment or ethical, moral or religious beliefs.

(d) The Director or his or her designee will determine whether to propose withdrawal of approval and hold a hearing based on the seriousness of the carrier's actions and its proposed method to effect corrective action.

[57 FR 14359, Apr. 20, 1992. Redesignated and amended at 59 FR 14764, 14765, Mar. 30, 1994; 63 FR 42586, Aug. 10, 1998]

Subpart 1609.71—Performance Evaluation

SOURCE: 63 FR 55337, Oct. 15, 1998, unless otherwise noted.

1609.7101 Policy.

At the end of each contract period, the contracting officer will determine each community-rated carrier's responsiveness to the Program requirements in 1609.7101–1.

1609.7101–1 Community-rated carrier incentive performance elements.

(a) Customer Service. This element is intended to assist OPM in achieving the goal of providing customer service that meets or exceeds the expectations of Federal enrollees. The Customer Service category will represent 70 percent of the total calculation and will be based on the carrier's compliance with the following items:

(1) *Timely Closure on Rates and Benefits Consistent with Policy Guidelines.* In order for information to be available to our customers in time for the annual Open Season, carriers must work with OPM to conclude benefits and rate negotiations by the established time frames. The contracting officer will evaluate this item based on the carrier's demonstrated record in providing its rate reconciliation and benefits information within the time frames prescribed by and in the format required by OPM.

(2) *Customer Information.* Enrollees must have accurate information and adequate time to make informed Open Season choices in selecting a health plan. In evaluating this item, the contracting officer will consider the carrier's timeliness and accuracy of information.

(3) *Meeting Customer Service Performance Standards.* Compliance with this item is essential so that OPM can ensure that the carrier is providing quality health care and other services to enrollees. The contracting officer will evaluate this item based on the carrier's submission of the Consumer Assessment of Health Plans Study (CAHPS) survey results and other measures as required contractually between OPM and the carrier. (This element will be implemented beginning with contract year 2000).

(4) *Cooperation in Surveys.* FEHB enrollees rely on feedback from the consumer assessment survey in selecting a health plan. The contracting officer will evaluate this item based on the carrier's record in cooperating with OPM and/or its designated representative in administering a consumer assessment survey or providing comparable survey results as specified in the FEHB contract and OPM guidance.

(5) *Paperless Enrollment/Enrollment Reconciliation*—(i) *Paperless Enrollment.* The requirement to cooperate in the OPM designated system for paperless enrollment is under the section entitled ''Enrollment Instructions'' in the FEHB Supplemental Literature Guidelines in the FEHB contract. The contracting officer will evaluate this item based on the carrier's ability to accept electronic data transmission from the OPM designated electronic enrollment system and issue ID cards timely.

(ii) *Enrollment Reconciliation.* The requirement for carriers to reconcile their enrollment records on a quarterly basis with those provided by Federal Government agencies is in the *Records and Information to be Furnished by OPM* clause of the contract, as well as 5 CFR 890.110 and 5 CFR 890.308. The contracting officer will evaluate this item based on the carrier's demonstrated record of initiating reconciliation procedures with applicable agency payroll offices on a quarterly basis in accordance with OPM guidance on reconciling enrollments and resolving enrollment discrepancies, as well as on the carrier's demonstrated record of following disenrollment procedures in accordance with 5 CFR 890.110 and 890.308.

(6) *Reconsideration/Disputed Claims.* The requirement for carriers to reconsider disputed health benefits claims is in 5 CFR 890.105. An incomplete explanation of denied benefits by the carrier places a burden on enrollees, causing them to seek reconsideration because the carrier did not fully explain its denial. Late carrier responses to OPM's requests for the carrier's reconsideration file delays OPM's response to enrollees. The contracting officer will evaluate this item based on whether the carrier provided OPM a complete reconciliation file within the time frame specified.

(b) Critical Contract Compliance Requirements. This performance category will represent 30 percent of the total computation and will be based on the carrier's compliance with the following items:

(1) *Timely Submissions.* The reports specified in the *Statistics and Special Studies and FEHB Quality Assurance* clauses of the contract and are essential for tracking enrollment, finances, rates, etc. In evaluating this item, the contracting officer will consider the carrier's timely submission of the contract, signed by the contracting official, to OPM, and on its demonstrated record in providing timely and accurate reports as required.

(2) *Notification of Changes in Contract Administrators.* OPM must be able to reach the person responsible for managing the carrier's FEHB contract without delay when an enrollee calls OPM in need of urgent medical treatment, an ID card, or other service. Each carrier's designated contact must maintain telephone and electronic communications with OPM so that issues can be resolved quickly. The contracting officer will evaluate this item based on the carrier's compliance with the *Notice* clause and *Contract Administration Data* sheet in the contract, and will consider the carrier's record in notifying OPM promptly of changes in its carrier representative or contracting official, mailing or electronic address, telephone or FAX number.

(3) *Notification of Changes in Name or Ownership; or Transfer of Assets, and Notification of Other Significant Events.* OPM must be able to assess the viability of the carrier and its ability to provide health care to enrollees so that they do not experience difficulty obtaining treatment and other services. Additionally, with regard to notification to OPM of other significant events, the carrier must notify OPM of such events as lawsuits, strikes, and natural disasters so that OPM can assess the carrier's ability to pay claims and provide services to enrollees. The contracting officer will evaluate this item based on the carrier's compliance with FEHBAR subparts 1642.12, Novation and Change-of-Name Agreements, 1642.70, Management Agreement (in Lieu of Novation Agreement), and 1652.222–70, including timely notification and explanation of all significant events that may have a material effect on the carrier's ability to perform the contract.

1609.7101–2 Community-rated carrier performance factors.

OPM will apply the Customer Service and Critical Contract Compliance Requirements percentage factors specified by the contracting officer when a community-rated carrier does not provide the information, payment, or service, perform the function, or otherwise meet its obligations as stated in 1609.7101–1. The total premium will be multiplied by the sum of all the factors and the resulting amount will be withheld from the carrier's periodic premium payments payable during the first quarter of the following contract period, unless an alternative payment arrangement is made with the carrier's contracting officer.

The factors for each basic element are set forth as follows:

COMMUNITY-RATED CARRIER PERFORMANCE FACTORS

Element	Performance factor (to be multiplied by premium and withheld from carrier's payments)
I. Customer Service (70% of Total)	.007
II. Critical Contract Compliance Requirements (30% of Total)	.003
Maximum Aggregate Performance Factor	.01

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1614—SEALED BIDDING

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1614.000 Applicability.

FAR part 14 has no practical application to FEHBP contracts in view of the statutory exemption provided by 5 U.S.C. 8902.

[52 FR 16039, May 1, 1987]

PART 1615—CONTRACTING BY NEGOTIATION

Sec.

1615.070 Negotiation authority.

Subpart 1615.1—Source Selection Processes and Techniques

1615.170 Applicability.

Subpart 1615.2—Solicitations and Receipt of Proposals and Information

1615.270 Applicability.

Subpart 1615.3—Source Selection

1615.370 Applicability.

Subpart 1615.4—Contract Pricing

1615.402 Pricing policy.
1615.404–4 Profit.
1615.404–70 Profit analysis factors.
1615.406–2 Certificate of accurate cost or pricing data for community-rated carriers.
1615.407–1 Rate reduction for defective pricing or defective cost or pricing data.
1615.470 Carrier investment of FEHB funds.
1615.470–1 Investment income clause.

Subparts 1615.8–1615.9 [Reserved]

Subpart 1615.70—Audit and Records—Negotiation

1615.7001 Audit and records.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16040, May 1, 1987, unless otherwise noted.

1615.070 Negotiation authority.

The authority to negotiate FEHB contracts is conferred by 5 U.S.C. 8902.

[70 FR 31379, June 1, 2005]

Subpart 1615.1—Source Selection Processes and Techniques

1615.170 Applicability.

FAR subpart 15.1 has no practical application to the FEHB Program because prospective contractors (carriers) are considered for inclusion in the FEHB Program according to criteria in 5 U.S.C. chapter 89 and 5 CFR part 890 rather than by competition between prospective carriers.

[70 FR 31379, June 1, 2005]

Subpart 1615.2—Solicitations and Receipt of Proposals and Information

1615.270 Applicability.

FAR subpart 15.2 has no practical application to the FEHB Program because OPM does not issue formal procurement solicitations to health benefits carriers. Eligible contractors (i.e., qualified health benefits carriers) are identified in accordance with 5 U.S.C. 8903. Offerors voluntarily come forth in accordance with procedures provided in 5 CFR part 890.

[70 FR 31379, June 1, 2005]

Subpart 1615.3—Source Selection

1615.370 Applicability.

FAR subpart 15.3 has no practical application to the FEHBP because prospective contractors (carriers) are considered for inclusion in the FEHBP in accordance with criteria provided in 5 U.S.C. chapter 89 and 5 CFR part 890 rather than on the basis of competition *between* prospective carriers.

[52 FR 16040, May 1, 1987. Redesignated and amended at 70 FR 31380, June 1, 2005]

Subpart 1615.4—Contract Pricing

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 70 FR 31380, June 1, 2005, unless otherwise noted.

1615.402 Pricing policy.

Pricing of FEHB contracts is governed by 5 U.S.C. 8902(i), 5 U.S.C. 8906, and other applicable law. FAR subpart 15.4 will be implemented by applying its policies and procedures—to the extent practicable—as follows:

(a) For both experience-rated and community-rated contracts for which the FEHB Program premiums for the contract term will be less than the threshold at FAR 15.403–4(a)(1), OPM will not require the carrier to provide cost or pricing data in the rate proposal for the following contract term.

(b) Cost analysis will be used for contracts where premiums and subscription income are determined on the basis of experience rating.

(c)(1) A combination of cost and price analysis will be used for contracts where premiums and subscription income are based on community-rates. For contracts for which the FEHB Program premiums for the contract term will be less than the threshold at FAR 15.403–4(a)(1), OPM will not require the carrier to provide cost or pricing data. The carrier is required to submit only a rate proposal and abbreviated utilization data for the applicable contract year. OPM will evaluate the proposed rates by performing a basic reasonableness test on the information submitted. Rates failing this test will be subject to further review.

(2) For contracts with fewer than 1,500 enrollee contracts for which the FEHB Program premiums for the contract term will be at or above the threshold at FAR 15.403–4(a)(1), OPM will require the carrier to submit its rate proposal, utilization data, and the certificate of accurate cost or pricing data required in 1615.406–2. In addition, OPM will require the carrier to complete the proposed rates form containing cost and pricing data, and the Community-Rate Questionnaire, but will not require the carrier to send these documents to OPM. The carrier will keep the documents on file for periodic auditor and actuarial review in accordance with 1652.204–70. OPM will perform a basic reasonableness test on the data submitted. Rates that do not pass this test will be subject to further OPM review.

(3) For plan year 2012, plans will have the option of continuing to use the similarly sized subscriber group (SSSG) rating methodology described in paragraph (c)(3)(i) of this section or using the MLR rating methodology described in paragraph (c)(3)(ii) of this section. All non-traditional community rated (TCR) plans will be required to submit FEHB-specific MLR information for every year beginning with plan year 2011.

(i) *Similarly sized subscriber group (SSSG) methodology*. (A) For contracts with 1,500 or more enrollee contracts for which the FEHB Program premiums for the contract term will be at or above the threshold at FAR 15.403–4(a)(1), OPM will require the carrier to provide the data and methodology used to determine the FEHB Program rates. OPM will also require the data and methodology used to determine the rates for the carrier's SSSGs. The carrier will provide cost or pricing data required by OPM in its rate instructions for the applicable contract period. OPM will evaluate the data to ensure that the rate is reasonable and consistent with the requirements in this chapter. If necessary, OPM may require the carrier to provide additional documentation.

(B) Contracts will be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the SSSGs. Such adjustments will be based on the lower of the two rates determined by using the methodology (including discounts) the carrier used for the two SSSGs.

(C) FEHB Program community-rated carriers will comply with SSSG criteria provided by OPM in the rate instructions for the applicable contract period.

(ii) *FEHB-specific medical loss ratio (MLR) threshold methodology*. (A) For contracts with 1,500 or more enrollee contracts for which the FEHB Program

premiums for the contract term will be at or above the threshold at FAR 15.403–4(a)(1), OPM will require the carrier to provide the data and methodology used to determine the FEHB Program rates. OPM will also require the data and methodology used to determine the medical loss ratio (MLR) as defined in the ACA (Pub. L. 111–148) and as defined by HHS in 45 CFR part 158 for all FEHB community rated plans other than those required by state law to use Traditional Community Rating. The carrier will provide cost or pricing data, as well as the FEHB-specific MLR threshold data required by OPM in its rate instructions for the applicable contract period. OPM will evaluate the data to ensure that the rate is reasonable and consistent with the requirements in this chapter. If necessary, OPM may require the carrier to provide additional documentation.

(B) Contracts will be subject to a subsidization penalty if OPM determines that the FEHB group did not meet the FEHB-specific MLR threshold specified in the annual rate instruction to carriers. Such a subsidization penalty will be deposited into a Subsidization Penalty Account held at the U.S. Treasury. This Subsidization Penalty Account will be held in common with all community rated carriers and will be annually distributed to the contingency reserve accounts of all non-TCR community rated plans on a pro-rata basis.

(C) FEHB Program community-rated carriers will comply with the MLR criteria, including the FEHB-specific MLR threshold provided by OPM in the rate instructions for the applicable contract period. FEHB plans that are required by state law to use TCR are exempt from this requirement and will use the SSSG methodology outlined in paragraph (c)(3)(i) of this section.

(4) Contracts will be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the similarly-sized subscriber groups (SSSGs). Such adjustments will be based on the lower of the two rates determined by using the methodology (including discounts) the carrier used for the two SSSGs.

(5) FEHB Program community-rated carriers will comply with SSSG criteria provided by OPM in the rate instructions for the applicable contract period.

(d) The application of FAR 15.402(b)(2) should not be construed to prohibit the consideration of preceding year surpluses or deficits in carrier-held reserves in the rate adjustments for subsequent year renewals of contracts based, in whole or in part, on cost analysis.

[70 FR 31380, June 1, 2005, as amended at 76 FR 38285, June 29, 2011; 77 FR 19524, Apr. 2, 2012]

1615.404–4 Profit.

(a) When the pricing of FEHB Program contracts is determined by cost analysis, OPM will determine the profit or fee prenegotiation objective (service charge) portion of the contracts by use of a weighted guidelines structured approach. The service charge so determined will be the total service charge that may be negotiated for the contract and will encompass any service charge (whether entitled service charge, profit, fee, contribution to reserves or surpluses, or any other title) that may have been negotiated by the prime contractor with any subcontractor or underwriter.

(b) OPM will not guarantee a minimum service charge.

1615.404–70 Profit analysis factors.

(a) OPM contracting officers will apply a weighted guidelines method in developing the service charge prenegotiation objective for FEHB Program contracts. The following factors, as defined in FAR 15.404–4(d), will be applied to projected incurred claims and allowable administrative expenses:

(1) *Contractor performance.* OPM will consider such elements as the accurate and timely processing of benefit claims and the volume and validity of disputed claims as measures of economical and efficient contract performance. This factor will be judged apart from the contractor's basic responsibility for contract performance and will be a measure of the extent and nature of the contractor's contribution to the

FEHB Program through the application of managerial expertise and effort. Evidence of effective contract performance will receive a plus weight, and poor performance or failure to comply with contract terms and conditions a negative weight. Innovations of benefit to the FEHB Program will generally result in a positive weight; documented inattention or indifference to cost control will generally result in a negative weight.

(2) *Contract cost risk*. In assessing the degree of cost responsibility and associated risk assumed by the contractor as a factor to be considered in negotiating profit, OPM will consider such underwriting elements as the availability of margins, group size, enrollment demographics and fluctuation, and the probability of conversion and adverse selection, as well as the extent of financial assistance the carrier renders to the contract. However, the ''loss carry forward basis'' of experience-rated group insurance practices, which mitigates contract risk, will likely serve to diminish this profit analysis factor in an overall determination of profit. This factor is intended to provide profit opportunities commensurate with the contractor's share of cost risks only, taking into account elements such as the adequacy and reliability of data for estimating costs.

(3) *Federal socioeconomic programs*. OPM will consider documented evidence of successful, contractor-initiated efforts to support Federal socioeconomic programs such as drug and substance abuse deterrents and concerns of the type enumerated in FAR 15.404–4(d)(iii), as a factor in negotiating profit. This factor will be assessed by considering the quality of the contractor's policies and procedures and the extent of unusual effort or achievement demonstrated. Evidence of effective support of Federal socioeconomic programs will receive a positive weight; poor support will receive a negative weight.

(4) *Capital investments*. This factor is generally not applicable to FEHB Program contracts because facilities capital cost of money may be an allowable administrative expense. Generally, this factor will be given a weight of zero. However, special purpose facilities or investment costs of direct benefit to the FEHB Program that are not recoverable as allowable or allocable administrative expenses may be taken into account in assigning a positive weight.

(5) *Cost control*. OPM will consider contractor-initiated efforts such as improved benefit design, cost-sharing features, innovative peer review, or other professional cost containment efforts as a factor in negotiating profit. OPM will use this factor to reward contractors with additional profit opportunities for self-initiated efforts to control contract costs.

(6) *Independent development*. OPM will consider any profit opportunities that may be directly related to relevant independent efforts such as the development of a unique and enhanced customer support system that is of demonstrated value to the FEHB Program and for which developmental costs have not been recovered directly or indirectly through allowable administrative expenses. OPM will use this factor to provide additional profit opportunities based upon an assessment of the contractor's investment and risk in developing techniques, methods, and practices having viability to the program at large. OPM will not consider improvements and innovations recognized and rewarded under any of the other profit factors.

(b) The following weight ranges for each factor are used in the weighted guidelines approach:

Profit factor	Weight ranges (percent)
1. Contractor performance	− .2 to + .45
2. Contract cost risk*	+.02 to + .2
3. Federal socioeconomic programs	− .05 to + .05
4. Capital investments	0 to + .02
5. Cost control	0 to + .35
6. Independent development	0 to + .03

*The contract cost risk factor is subdivided into two parts: group size (.02 to .10) and other risk elements (0 to .10). With respect to the group size element, subweights should be assigned as follows:

Enrollment	Weight (percent)
10,000 or less	.06 to .10
10,001–50,000	.05 to .09

Enrollment	Weight (percent)
50,001–200,000	.04 to .07
200,001–500,000	.03 to .06
500,001 and over	.02 to .04

1615.406–2 Certificates of accurate cost or pricing data for community rated carriers.

(a) The contracting officer will require a carrier with a contract meeting the requirements in 1615.402(c)(2) or (3) to execute one or more of the Certificates contained in this section. A carrier with a contract meeting the requirements in 1615.402(c)(2) will complete the appropriate Certificate(s) and keep such on file at the carrier's place of business in accordance with 1652.204–70. A carrier with a contract meeting the requirements in 1615.402(c)(3) will complete and submit the appropriate certificate(s) to OPM.

(b) A carrier using the SSSG methodology described in 1615.402(c)(3)(i) will submit the ''Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers (SSSG methodology)'' along with its rate reconciliation during the first quarter of the applicable contract year. A carrier using the MLR methodology described in 1615.402(c)(3)(ii) will submit two forms. The ''Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers (MLR methodology)'' will be submitted along with the rate reconciliation during the first quarter of the applicable contract year. The ''Certificate of Accurate MLR Calculation'' will be submitted when the carrier submits its FEHB-specific MLR calculation to OPM.

(Beginning of first certificate)

Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers (SSSG methodology)

This is to certify that, to the best of my knowledge and belief: (1) The cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting officer or the Contracting officer's representative or designee, in support of the _____*FEHB Program rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHB Program contract and are accurate, complete, and current as of the date this certificate is executed; and (2) the methodology used to determine the FEHB Program rates is consistent with the methodology used to determine the rates for the carrier's Similarly Sized Subscriber Groups.

*Insert the year for which the rates apply.

Firm:

Name:

Signature:

Date of Execution:

(End of first certificate)

(Beginning of second certificate)

Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers (MLR methodology)

This is to certify that, to the best of my knowledge and belief: (1) The cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting officer or the Contracting officer's representative or designee, in support of the _____*FEHB Program rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHB Program contract and are accurate, complete, and current as of the date this certificate is executed;

*Insert the year for which the rates apply.

Firm:

Name:

Signature:

Date of Execution:

(End of second certificate)

(Beginning of third certificate)

Certificate of Accurate MLR Calculation

This is to certify that, to the best of my knowledge and belief: the determination of the carrier's FEHB-specific medical loss ratio for * is accurate, complete, and consistent with the methodology as stated in §1615.402(c)(3)(ii).

*Insert the year for which the MLR calculation applies.

Firm:

Name:

Signature:

Date of Execution:

(End of certificate)

[77 FR 19524, Apr. 2, 2012]

1615.407–1 Rate reduction for defective pricing or defective cost or pricing data.

The clause set forth in section 1652.215–70 will be inserted in FEHB Program contracts, at or above the threshold in FAR 15.403–4(a)(1), that are based on a combination of cost and price analysis (community-rated).

1615.470 Carrier investment of FEHB funds.

(a) Except for contracts based on a combination of cost and price analysis (community-rated), the carrier is required to invest and reinvest all funds on hand, including any attributable to the special reserve or the reserve for incurred but unpaid claims, exceeding the funds needed to discharge promptly the obligations incurred under the contract.

(b) The carrier is required to credit income earned from its investment of FEHB funds to the special reserve on behalf of the FEHB Program. If a carrier, for any reason, fails to invest excess FEHB funds or to credit any income due to the contract, it will return or credit any investment income lost to OPM or the special reserve.

(c) Investment income. Investment income is the net amount earned by the carrier after deducting investment expenses.

1615.470–1 Investment income clause.

The clause set forth in 1652.215–71 will be inserted in all FEHB contracts based on cost analysis.

Subparts 1615.8–1615.9 [Reserved]

Subpart 1615.70—Audit and Records—Negotiation

1615.7001 Audit and records.

The Contracting officer will modify 52.215–2 in all FEHB Program experience-rated contracts by amending paragraph (g) of that section to replace the words ''exceed the simplified acquisition threshold'' with ''equals or exceeds $550,000.'' This amount shall be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act pursuant to 41 U.S.C. 254b(a)(7).

[70 FR 31381, June 1, 2005]

PART 1616—TYPES OF CONTRACTS

Subpart 1616.1—Selecting Contract Types

Sec.
1616.102 Policies.
1616.105 Solicitation provision.

Subpart 1616.70—Negotiated Benefits Contracts

1616.7001 Clause—contracts based on a combination of cost and price analysis (community rated).
1616.7002 Clause—contracts based on cost analysis (experience rated).

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16041, May 1, 1987, unless otherwise noted.

Subpart 1616.1—Selecting Contract Types

1616.102 Policies.

All FEHBP contracts shall be negotiated benefits contracts.

[62 FR 47575, Sept. 10, 1997]

1616.105 Solicitation provision.

FAR 16.105 has no practical application because the statutory provisions of 5 U.S.C. chapter 89 obviate the issuance of solicitations.

Subpart 1616.70—Negotiated Benefits Contracts

SOURCE: 62 FR 47575, Sept. 10, 1997, unless otherwise noted.

1616.7001 Clause—contracts based on a combination of cost and price analysis (community rated).

The clause at section 1652.216–70 shall be inserted in all FEHBP contracts based on a combination of cost and price analysis (community rated).

1616.7002 Clause—contracts based on cost analysis (experience rated).

The clause at section 1652.216–71 shall be inserted in all FEHBP contracts based on cost analysis (experience rated).

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1622.1—Basic Labor Policies

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1622.103–70 Contract clause.

The clause at 1652.222–70 shall be inserted in all FEHBP contracts.

[55 FR 27415, July 2, 1990]

PART 1624—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1624.1—Protection of Individual Privacy

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1624.104 Contract clause.

Records retained by FEHBP carriers on Federal subscribers and members of their families serve the carriers' own commercial function of paying health benefits claims and are not maintained to accomplish an agency function of OPM. Consequently, the records do not fall within the provisions of the Privacy Act. Nevertheless, OPM recognizes the need for carriers to keep certain records confidential. The clause at 1652.224–70 shall be inserted in all FEHBP contracts.

[52 FR 16041, May 1, 1987]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1629—TAXES

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 62 FR 47575, Sept. 10, 1997, unless otherwise noted.

Subpart 1629.4—Contract Clauses

1629.402 Foreign contracts.

The clause set forth in section 1652.229–70 shall be inserted in all FEHBP contracts performed outside the United States, its possessions, and Puerto Rico.

PART 1631—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1631.1—Definitions

Sec.
1631.1 Definitions.

Subpart 1631.2—Contracts With Commercial Organizations

1631.200 Scope of subpart.
1631.201–70 Credits.
1631.203 Indirect costs.
1631.203–70 Allocation techniques.
1631.203–71 Business unit General and Administrative (G&A) expenses.
1631.203–72 Home office expense.
1631.205 Selected costs.
1631.205–10 Cost of money.
1631.205–41 Taxes.
1631.205–70 FEHBP public relations and advertising costs.
1631.205–71 FEHBP bad debts.
1631.205–72 FEHBP compensation for personal services.
1631.205–73 FEHBP interest expense.
1631.205–74 FEHBP losses on other contracts.
1631.205–75 Selling costs.
1631.205–76 Trade, business, technical and professional activity costs.
1631.205–77 FEHBP start-up and other nonrecurring costs.
1631.205–78 FEHBP printed material costs.
1631.205–79 Mandatory statutory reserves.
1631.205–80 Major subcontractor service charges.
1631.205–81 Inferred reasonableness.
1631.205–82 Audits.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16041, May 1, 1987, unless otherwise noted.

Subpart 1631.1—Definitions

1631.1 Definitions.

The definitions in FAR 31.001 are applicable to this section unless otherwise noted.

[70 FR 31390, June 1, 2005]

Subpart 1631.2—Contracts With Commercial Organizations

1631.200 Scope of subpart.

The cost principles under this subpart apply only to contracts in which premiums and subscription income are determined on the basis of experience rating, in which cost analysis is performed, or in which price is determined on the basis of actual costs incurred.

1631.201–70 Credits.

The provisions of FAR 31.201–5 shall apply to income, rebates, allowances, and other credits resulting from benefit payments. Examples of such credits include:

(a) Coordination of benefit refunds, including subrogation settlements;

(b) Hospital year-end settlements and other applicable provider discounts;

(c) Uncashed and returned checks;

(d) Utilization review refunds;

(e) Contract prescription drug rebates;

(f) Volume discounts;

(g) Refunds and other payments or recoveries attributable to litigation with subscribers or providers of health services; and,

(h) Erroneous benefit payment, overpayment, and duplicate payment recoveries.

[70 FR 31390, June 1, 2005]

1631.203 Indirect costs.

For the purposes of applying FAR 31.203(g)(2) to FEHB Program contracts, OPM considers the monthly rates used by some carriers to be a general practice in the insurance industry.

[70 FR 31391, June 1, 2005]

1631.203–70 Allocation techniques.

(a) Carriers shall use the following methods for allocating groupings of business unit indirect costs. Carriers shall consistently apply the methods and techniques established to classify direct and indirect costs, to group indirect costs and to allocate indirect costs to cost objectives.

(1) *Input method.* The preferred allocation technique is one that shows the consumption of resources in performance of the activities (input) for the function(s) represented by the cost grouping. This allocation technique should be used in circumstances where there is a direct and definitive relationship between the function(s) and the benefiting cost objectives. Measures of input ordinarily may be expressed in terms such as labor hours or square footage. This means costs may be allocated by use of a rate, such as a rate per labor hour or cost per square foot.

(2) *Output method.* Where input measures are unavailable or impractical to determine, the basis for allocation may be a measure of the output of the function(s) represented by the cost grouping. The output becomes a substitute measure for the use of resources and is a reasonable alternative when a direct measure of input is impractical. Output may be measured in terms of units of end product produced by the function(s). Examples of output measures include number of claims processed by a claims processing center, number of pages printed in a print shop, number of purchase orders processed by a purchasing department, or number of hires by a personnel office.

(3) *Surrogate method.* Where neither activity (input) nor output of the function(s) can be measured practically, a surrogate must be used to measure the resources utilized. Surrogates used to represent the relationship generally measure the benefit to the cost objectives receiving the service and should vary in proportion to the services received. For example, if a personnel department provides various services that cannot be measured practically on an activity (input) or output basis, number of personnel served might reasonably represent the use of resources of the personnel function for the cost objectives receiving the service, where this base varies in proportion to the services performed.

(4) *Other method.* Some cost groupings cannot readily be allocated on measures of specific beneficial or causal relationships under paragraph (a)(1), (a)(2), or (a)(3) of this section. Such costs do not have a direct and definitive relationship to the benefiting cost objectives. Generally, the cost of overall management activities falls in this category. Overall management costs should be grouped in relation to the activities managed. The base selected to measure the allocation of these indirect costs to cost objectives should be a base representative of the entire activity being managed. For example, the total operating expenses of activities managed might be a reasonable base for allocating the general indirect costs of a business unit. Another reasonable method for allocating general indirect costs might be to base them on a percentage of contracts. These examples are not meant to be exhaustive, but rather are examples of allocation methods that may be acceptable under individual circumstances. See also General and Administrative (G&A) expenses, FEHBAR 1631.203–71.

(b) Carriers that use multiple cost centers to accumulate and allocate costs shall apply the techniques in paragraph (a) of this section at each step of the allocation process. Accordingly, the allocation of costs among cost centers at the initial entry into the cost accounting system shall be made in compliance with paragraph (a) of this section. Likewise, the allocation of the cost of interim cost centers to final cost centers is subject to paragraph (a) of this section. If costs of final cost centers are allocated among final cost objectives, the allocation shall also be made in accordance with paragraph (a) of this section. It is possible that carriers using multiple cost centers to accumulate and allocate costs may not have any direct costs, i.e., costs identified specifically with a final cost objective.

(c) The allocation of business unit general and administrative expenses and the allocation of home office expenses to segments are also subject to

FEHBAR 1631.203–71 and FEHBAR 1631.203–72, respectively.

[70 FR 31391, June 1, 2005]

1631.203–71 Business unit General and Administrative (G&A) expenses.

G&A expenses shall be allocated to final cost objectives by a base or method that represents the total activity of the business unit.

[70 FR 31391, June 1, 2005]

1631.203–72 Home office expense.

A carrier's practices for allocating home office expenses to the segments of the carrier will be acceptable for purposes of FAR 31.203 if they are allocated on the basis of the beneficial or causal relationship between the home office activities and the segments to which the expenses are allocated. Expenses that cannot be allocated on the basis of a more specific beneficial or causal relationship should be allocated on a basis representative of the entire activity being managed. The compliance of such allocations with FAR 31.203 shall be determined on the basis of the facts and circumstances of each situation.

[70 FR 31391, June 1, 2005]

1631.205 Selected costs.

1631.205–10 Cost of money.

For the purposes of FAR 31.205–10(b)(3), the estimated facilities capital cost of money is specifically identified if it is identified in the prior year's Annual Accounting Statement or, for new experience-rated carriers, the supplemental information supporting submitted costs (such as the Supplemental Schedule of Administrative Expenses).

[70 FR 31391, June 1, 2005]

1631.205–41 Taxes.

5 U.S.C. 8909(f)(1) prohibits the imposition of taxes, fees, or other monetary payment, directly or indirectly, on FEHB premiums by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority of those entities. Therefore, FAR 31.205–41 is modified to include those taxes as unallowable costs. The prohibited payments, referred to elsewhere in these regulations as ''premium taxes,'' applies to all payments directed by States or municipalities, regardless of how they may be titled, to whom they must be paid, or the purpose for which they are collected, and it applies to all forms of direct and indirect measurements on FEHBP premiums, however modified, to include cost per contract or enrollee, with the sole exception of a tax on net income or profit, if that tax, fee, or payment is applicable to a broad range of business activity.

[56 FR 57496, Nov. 12, 1991]

1631.205–70 FEHBP public relations and advertising costs.

(a) The cost of media messages that are directed at advising current FEHBP subscribers on how to obtain benefits shall be an allowable expense within the meaning of FAR 31.205–1 because this service is directly related to performance of the FEHBP contract. If there is any question about the allowability of such a cost, the carrier may request advance approval regarding the content and cost of the message.

(b) Costs of media messages not provided for in paragraph (a) of this section are allowable if the content is specifically approved by the contracting officer and all of the following criteria are met:

(1) The primary effect of the message is to disseminate information on health care cost containment or preventive health care;

(2) The costs of the carrier's messages are allocated to all underwritten and non-underwritten lines of business; and

(3) The contracting officer approves the total dollar amount of the carrier's messages to be charged to the FEHBP in advance of the contract year.

(c) Costs of messages that are intended to, or which have the primary effect of, calling favorable attention to the carrier (or subcontractor) for the purpose of enhancing its overall image or selling its health plan are not allowable.

1631.205–71 FEHBP bad debts.

Erroneous benefit payments are not automatically disallowed by FAR 31.205–3.

1631.205–72 FEHBP compensation for personal services.

(a) Overtime on an FEHBP contract would normally meet the condition specified in FAR 22.103. Premiums for overtime, extra-pay shifts, and multi-shifts meeting the specified conditions shall be allowed without prior approval.

(b)(1) The costs of compensated personal absence shall be assigned to the cost accounting period or periods in which entitlement was earned. Entitlement means an employee's right, whether conditional or unconditional, to receive a determinable amount of compensated personal absence, or pay in lieu thereof.

(2) If at the beginning of the 1st year a carrier subject to paragraph (b)(1) of this section has a liability for accrued but unpaid expenses for compensated personal absences that would otherwise be allocable to FEHB contracts, the carrier may include such costs in a suspense account. The suspense account may be amortized and included in government contract costs at a rate not exceeding 20 percent per year.

[52 FR 16041, May 1, 1987, as amended at 70 FR 31391, June 1, 2005]

1631.205–73 FEHBP interest expense.

(a) Interest charges incurred in the administration of FEHBP contracts are not allowable in accordance with FAR 31.205–20. However, interest charges that are associated with the carrier's investment of FEHBP account funds are not considered administrative costs and may be allowable under very limited circumstances if all of the following criteria are met:

(1) Borrowing is limited to the positive balance of the carrier's entire FEHBP investment portfolio;

(2) FEHBP funds are tied up in long-term securities;

(3) Liquidation of long-term securities would cost more than the cost of the interest;

(4) The interest rates charged are at or below current market rates; and

(5) Advance written approval of the contracting officer is obtained before such costs are incurred.

(b) The carrier must demonstrate on a case-by-case basis that borrowing rather than cashing in long-term investments shall actually result in cost savings to the FEHB Program. Satisfactory demonstration of cost savings is a prerequisite to contracting officer approval of the interest cost as a charge to the contract.

(c) If the interest charge is allowed, the risk factor in the service charge will be adjusted downward so that the carrier does not recover interest costs through both the service charge and an allowance under this paragraph.

1631.205–74 FEHBP losses on other contracts.

FAR 31.205–23 shall not be construed to prohibit the application of the normal ''loss carry forward'' principle that is fundamental to continuing insurance contracts that are based on experience rating.

1631.205–75 Selling costs.

(a) FAR 31.205–38 is modified to eliminate from allowable costs those costs related to sales promotion and the payment of sales commissions fees or salaries to employees or outside commercial or selling agencies for enrolling Federal subscribers in a particular FEHB plan.

(b) Selling costs are allowable costs to FEHBP contracts to the extent that they are necessary for conducting annual contract negotiations with the Government and for liaison activities necessary for ongoing contract administration. Personnel and related travel costs are allowable for attendance at Open Season Health fairs and other similar activities at which carriers give enrollees information about their choices among health plans (but see FAR 31.205–1 'Public relations and advertising costs', and The Federal Employees Health Benefits Handbook for Personnel and Payroll Offices, Subchapter S2–3(f) 'Controlling contacts between employees and carriers').

[52 FR 16041, May 1, 1987, as amended at 62 FR 47575, Sept. 10, 1997]

1631.205–76 Trade, business, technical, and professional activity costs.

(a) FEHBP participating plans, carriers, and underwriters shall seek the advance written approval of the contracting officer for allowability of all or part of the costs associated with trade, business, technical, and professional activities (FAR 31.205–43) when the allocable costs of such participation to the FEHBP will exceed $1,000 annually and when the carrier or underwriter allocates more than 50% of the membership cost of a trade, business, technical, or professional organization to the FEHBP.

(b) When approval of costs for membership in an organization is required, the carrier or underwriter must demonstrate conclusively that membership in such an organization and participation in its activities extend beyond the contractual relationship with OPM, have a reasonable relationship to providing care and services to FEHBP enrollees, and that the organization is not engaged in activities such as those cited in FAR 31.205–22 (lobbying costs) for which costs are not allowable.

1631.205–77 FEHBP start-up and other nonrecurring costs.

Precontract costs (FAR 31.205–32) shall be allowed only to the extent provided for by advance agreement in accordance with FAR 31.109.

1631.205–78 FEHBP printed material costs.

Unless OPM determines that it is in the best interest of the FEHBP to do otherwise, if a carrier orders printed material that is available from the Government Printing Office (GPO) under the ''rider system'' from another source, the allowable contract charges shall be the lesser of the amount actually paid or the cost that would have been incurred had the carrier ridden OPM's GPO order.

1631.205–79 Mandatory statutory reserves.

Charges for mandatory statutory reserves are not allowed unless provided for in the contract. When the term ''mandatory statutory reserve'' is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law upon the carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the carrier, a pro rata share based upon FEHBP's contribution to the total carrier's set aside shall be returned to the FEHBP in accordance with FAR 31.201–5.

1631.205–80 Major subcontractor service charges.

In a subcontract for enrollment and eligibility determinations, administration of claims and payment of benefits, and payment or provision of actual health services, and/or assumption of insurance risk or underwriting, when costs are determined on the basis of actual costs incurred or experience rating, any amount that exceeds the allowable cost of the subcontract (whether entitled service charge, profit, fee, contribution to reserve, surplus, or any other title) is not allowable under the contract. Amounts which exceed allowable costs may be paid to a major subcontractor only from the service charge negotiated between OPM and the Carrier.

1631.205–81 Inferred reasonableness.

If the carrier follows the notification and consent requirements of paragraphs (a), (b) and (c) of 1652.244–70, and subsequently obtains the Contracting officer's consent or ratification, then the reasonableness of the subcontract's costs shall be inferred.

[70 FR 31382, June 1, 2005]

1631.205–82 Audits.

Carriers should ensure that the public accounting firms with which they contract for audits of FEHB accounts

are registered with the Public Company Accounting Oversight Board (PCAOB).

[71 FR 3015, Jan. 19, 2006]

PART 1632—CONTRACT FINANCING

Subpart 1632.1—General

Sec.
1632.170 Recurring premium payments to carriers.
1632.171 Clause—community-rated contracts.
1632.172 Clause—experience-rated contracts.

Subpart 1632.6—Contract Debts

1632.607 Tax credit.
1632.617 Contract clause.

Subpart 1632.7—Contract Funding

1632.770 Contingency reserve payments.
1632.771 Non-commingling of FEHBP funds.
1632.772 Contract clause.

Subpart 1632.8—Assignment of Claims

1632.806–70 Contract clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16043, May 1, 1987, unless otherwise noted.

Subpart 1632.1—General

1632.170 Recurring premium payments to carriers.

(a)(1) *Recurring payments to carriers of community-rated plans.* OPM will pay to carriers of community-rated plans the premium payments received for the plan less the amounts credited to the contingency and administrative reserves, amounts assessed under paragraph (a)(2) of this section, and amounts due for other contractual obligations. Premium payments will be due and payable not later than 30 days after receipt by the Federal Employees Health Benefits (FEHB) Fund.

(2) The sum of the two performance factors applicable under 1609.7101–2 will be multiplied by the carrier's total net-to-carrier premium dollars paid for the preceding contract period. The amount obtained after the total premium is multiplied by the sum of the factors will be withheld from the carrier's periodic premium payment payable during the first quarter of the following contract period unless an alternative payment arrangement is made with the carrier's contracting officer. OPM will deposit the withheld funds in the carrier's contingency reserve for the plan. The aggregate amount withheld annually for performance for any carrier will not exceed one percent of premium for any contract period.

(3) Any subsidization penalty levied against a community rated plan as outlined in 48 CFR 1615.402(c)(3)(ii)(B) must be paid within 60 days from notification. If payment is not received within the 60 day period, OPM will withhold from the community rated carriers the periodic premium payment payable until fully recovered. OPM will deposit the withheld funds in the subsidization penalty reserve described in 5 CFR 890.503(c)(6).

(b)(1) *Recurring payments to carriers of experience-rated plans.* OPM will make payments on a letter of credit (LOC) basis. Premium payments received for the plan, less the amounts credited to the contingency and administrative reserves and amounts for other obligations due under the contract, will be made available for carrier drawdown not later than 30 days after receipt by the FEHB Fund.

(2) Withdrawals from the LOC account will be made on a checks-presented basis. Under a checks-presented basis, drawdown on the LOC is delayed until the checks issued for FEHB Program disbursements are presented to the carrier's bank for payment.

(3) OPM may grant a waiver of the restriction of LOC disbursements to a checks-presented basis if the carrier requests the waiver in writing and demonstrates to OPM's satisfaction that the checks-presented basis of LOC disbursements will result in significantly increased liability under the contract, or that the checks-presented basis of LOC disbursements is otherwise clearly and significantly detrimental to the operation of the plan. Payments to carriers that have been granted a waiver

may be made by an alternative payment methodology, subject to OPM approval.

[57 FR 14360, Apr. 20, 1992, as amended at 63 FR 55338, Oct. 15, 1998; 64 FR 36272, July 6, 1999; 65 FR 36386, June 8, 2000; 70 FR 31382, June 1, 2005; 76 FR 38286, June 29, 2011]

1632.171 Clause—community-rated contracts.

The clause at 1652.232–70 shall be inserted in all community-rated FEHBP contracts.

[57 FR 14360, Apr. 20, 1992]

1632.172 Clause—experience-rated contracts.

The clause at 1652.232–71 shall be inserted in all experience-rated FEHBP contracts.

[57 FR 14360, Apr. 20, 1992]

Subpart 1632.6—Contract Debts

1632.607 Tax credit.

FAR 32.607 has no practical application to FEHBP contracts. The statutory provisions at 5 U.S.C. 8906(c) and (d) authorize joint enrollee and Government contributions to the FEHBP Fund. Because the Fund is comprised of contributions by enrollees as well as the Government, carriers may not offset debts to the Fund by a tax credit which is solely a Government obligation.

1632.617 Contract clause.

The clause at (FAR) 48 CFR 52.232–17 will be modified in all FEHBP contracts to exclude the words ''net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481).''

[59 FR 14765, Mar. 30, 1994]

Subpart 1632.7—Contract Funding

1632.770 Contingency reserve payments.

(a) Payments from the contingency reserve shall be made in accordance with 5 CFR 890.503.

(b) A carrier for an FEHB plan may apply to OPM at any time for a payment from the contingency reserve that is in addition to those amounts, if any, paid under 5 CFR 890.503(c)(1) through (c)(4), if the carrier can show good cause, such as, unexpected adverse claims experience. OPM will decide whether to allow the request in whole or in part and will advise the carrier of its decision. However, OPM shall not unreasonably withhold approval for amounts requested that exceed the plan's preferred minimum balance for the contingency reserve.

1632.771 Non-commingling of FEHBP funds.

(a) This section applies to contracts based on cost analysis.

(b) Carrier or underwriter commingling of FEHBP funds with those from other sources makes it difficult to precisely determine FEHBP cash balances at any given time or to precisely determine investment income attributable to FEHBP invested assets.

(c) FEHBP funds shall be maintained separately from other cash and investments of the carrier or underwriter. Cash and investment balances reported on FEHBP Annual Accounting Statements must agree with the carrier's books and records.

(d) This requirement may be waived by the contracting officer in accordance with the clause at 1652.232–72 when adequate accounting and other controls are in effect. If the requirement is waived, the waiver will remain in effect until it is withdrawn by OPM. The waiver shall be withdrawn if OPM determines that the accounting controls are no longer adequate to properly account for FEHBP funds.

[52 FR 16043, May 1, 1987, as amended at 70 FR 31382, June 1, 2005]

1632.772 Contract clause.

The clause at 1652.232–72 shall be included in all contracts that are based on cost analysis.

[52 FR 16043, May 1, 1987, as amended at 70 FR 31382, June 1, 2005]

Subpart 1632.8—Assignment of Claims

1632.806–70 Contract clause.

The clause set forth in 1652.232–73 shall be inserted in all FEHBP contracts.

[55 FR 27415, July 2, 1990]

PART 1633 [RESERVED]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1642—CONTRACT ADMINISTRATION

Subpart 1642.12—Novation and Change-of-Name Agreements

Sec.
1642.1201 Definitions.
1642.1204 Agreement to recognize a successor in interest (novation agreement).
1642.1205 Agreement to recognize carrier's change of name.

Subpart 1642.70—Management Agreement (in Lieu of Novation Agreement)

1642.7001 Management agreement.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 59 FR 14765, Mar. 30, 1994, unless otherwise noted.

Subpart 1642.12—Novation and Change-of-Name Agreements

1642.1201 Definitions.

The definitions at (FAR) 48 CFR 42.1201 shall have the same meaning for this subpart.

1642.1204 Agreement to recognize a successor in interest (novation agreement).

(a) (FAR) 48 CFR 42.1204 shall be implemented as provided in this section. The contracting officer shall insert the following agreement in all FEHBP contracts for use when the contractor's assets or the entire portion of the assets pertinent to the performance of the contract, as determined by the Government, are transferred.

NOVATION AGREEMENT

The (*insert corporate name*) (Transferor), a corporation duly organized and existing under the laws of (*insert State*) with its principal office in (*insert city, state*); the (*insert corporate name*) (Transferee), (if appropriate add ''formerly known as the _____ Corporation'') a corporation duly organized and existing under the laws of (*insert State*) with its principal office in (*insert city*); and the UNITED STATES OF AMERICA (Government) enter into this Agreement effective (*insert date transfer of assets became effective under applicable State law*).

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the Office of Personnel Management (OPM), has entered into Contract Number ____ with the Transferor. The term *contracts*, as used in this Agreement, means the contract cited in this paragraph and all other contracts and purchase orders, including any and all amendments and modifications made between the Government and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) As of _____ 19____ (insert date transfer of assets became effective under applicable State law), the Transferor has transferred to the Transferee all the assets of the Transferor, or the entire portion of the Transferor's assets pertinent to performing the contract, as determined by OPM, by virtue of a(an) (*insert term describing the legal transaction involved*) between the Transferor and the Transferee.

(3) The Transferee has acquired all the assets of the Transferor, or the entire portion of the Transferor's assets pertinent to performing the contract, as determined by OPM, by virtue of the transfer in paragraph (a)(1).

(4) The Transferee has assumed all obligations and liabilities of the Transferor pertinent to performing the contract, as determined by OPM, by virtue of the transfer in paragraph (a)(1).

(5) The Transferee is in a position to fully perform all obligations that may exist under the contract.

(6) It is consistent with the Government's interest to recognize the Transferee as the successor party to the contract.

(7) Evidence of the transfer in paragraph (a)(1) has been filed with the Government.

(8) [If applicable:] A certificate dated _____, 19____, signed by the Secretary of State of (*insert State*), to the effect that the corporate name of (*insert old corporate name*) was changed to (*insert new corporate name*) on _____, 19____, has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT BY THIS AGREEMENT—

(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government or the Federal Employees Health Benefits Fund that it now has or may have in the future in connection with the contract.

(2) The Transferee agrees to be bound by and to perform the contract in accordance with the conditions contained in the contract. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor pertinent to the contract, as determined by OPM, as if the Transferee were the original party to the contract.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contract, with the same force and effect as if the action had been taken by the Transferee.

(4) The Government recognizes the Transferee as the Transferor's successor in interest in and to the contract. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contract as if the Transferee were the original party to the contract. Following the effective date of this Agreement, the terms *Carrier* and *Contractor* as used in the contract, shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.

(6) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the contract, shall be considered to have discharged those parts of the Government's obligations under the contract. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the contract, to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer of this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contract.

(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee (i) assumes under this Agreement or (ii) may undertake in the future should this contract be modified under its terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(9) The contract shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement effective (*insert the date transfer of assets became effective under applicable State law*).

UNITED STATES OF AMERICA,
By _____ Date _____
Title _____

(Enter Transferor's name)

By _____ Date _____
Title _____

(Corporate Seal)

(Enter Transferee's name)

By _____
Title _____

(Corporate Seal)

CERTIFICATE

I, _____, certify that I am the Secretary of (*insert name of Transferor*); that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this _____ day of _____, 19____.

By _____

(Corporate Seal)

CERTIFICATE

I, _____, certify that I am the Secretary of (insert name of Transferee); that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this ___ day of _____ 19____,

By _____

(Corporate Seal)

(End of agreement)

(b) Failure to submit the properly completed and signed Novation Agreement in a timely manner shall be cause for termination of the contract by OPM in accordance with FEHBAR 1652.249–70.

(c) The Contracting Officer shall terminate the contract if it is determined

not to be in the Government's interest to recognize a successor in interest to the contract. The effective date will be decided by the Contracting Officer after considering the best interests of FEHBP enrollees.

1642.1205 Agreement to recognize carrier's change of name.

(a) (FAR) 42.1205 shall be implemented as provided in this section. The Contracting Officer shall insert the following Agreement in all FEHBP contracts for use when the carrier changes its name and the Government's and contractor's rights and obligations remain unaffected.

CHANGE-OF-NAME AGREEMENT

The (insert new Carrier name), a corporation duly organized and existing under the laws of (insert State), and the UNITED STATES OF AMERICA (Government), enter into this Agreement effective (insert date when the change of name became effective under applicable State law).

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the Office of Personnel Management (OPM), has entered into Contract Number _____ with the (insert old Carrier name). The term *contracts* as used in this Agreement means the contract cited in this paragraph and all other contracts and purchase orders and all modifications thereto made by the Government and the Contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the OPM or the Carrier has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) The (insert old Carrier name), by an amendment to its certificate of incorporation, dated _____, 19____, has changed its corporate name to (insert new Carrier name).

(3) This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and the Carrier under the contract are unaffected by this change.

(4) Documentary evidence of this change of corporate name has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT:

(1) The contract is amended by substituting the name " (insert new Carrier name)" for the name "(insert old Carrier name)" wherever it appears in the contract; and

(2) Each party has executed this Agreement effective the day and year stated in paragraph (a)(2).

UNITED STATES OF AMERICA,

_____ Date _____

Title

(Enter new Carrier name)

By _____ Date _____

Title _____

(Corporate Seal)

CERTIFICATE

I, _____, certify that I am the Secretary of (insert new Carrier name); that _____, who signed this Agreement for this corporation, was then (insert position held) of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this ____ day of _____ 19____.

By _____

(Corporate Seal)

(End of agreement)

(b) Failure to submit the properly completed and signed Change-of-Name Agreement in a timely manner may be cause for termination of the contract by OPM in accordance with FEHBAR 1652.249–70.

Subpart 1642.70—Management Agreement (in Lieu of Novation Agreement)

1642.7001 Management agreement.

When it is in the best interest of FEHBP enrollees to continue a contract for an interim period after the carrier discontinues its operations and has entered into a Purchase and Sale Agreement (or other descriptive term), but before a successor in interest has been recognized by OPM, the carrier may submit for OPM approval a Management Agreement that enables it to continue a contract through an agreement with a third party to administer the day-to-day performance of the contract. Examples of situations in which a Management Agreement may be accepted by OPM are:

(a) When a transfer of assets does not meet the criteria for a novation;

(b) While a request for a novation is pending;

(c) While awaiting a decision on a request for a novation;

(d) As an interim measure, when the timing of a transfer of assets or the timing of a carrier's withdrawal make administration of the contract inconvenient;

(e) When it is not in the interests of the Government to either recognize a successor in interest or to immediately terminate the existing FEHBP contract.

PART 1643—CONTRACT MODIFICATIONS

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 62 FR 47575, Sept. 10, 1997, unless otherwise noted.

Subpart 1643.2—Changes

1643.205–70 Contract clause.

The clause set forth in section 1652.243–70 shall be inserted in all FEHB Program contracts.

PART 1644—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1644.1—General

Sec.
1644.170 Policy for FEHB Program subcontracting.

Subpart 1644.2—Consent to Subcontracts

1644.270 FEHBP contract clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16043, May 1, 1987, unless otherwise noted.

Subpart 1644.1—General

1644.170 Policy for FEHB Program subcontracting.

(a) *General policy*. Carriers must follow commercially reasonable procurement procedures that comply, when required, with the Federal Acquisition Regulations (FAR) policies and procedures relating to competition and contract pricing for the acquisition of both commercial and noncommercial items.

(b) *Consent*. For all experience-rated contracts, carriers will notify the Contracting officer in writing at least 30 days in advance of entering into any subcontract or subcontract modification, or as otherwise specified by the contract, if: the amount of the subcontract or the amount of the subcontract and modification charged to the FEHB Program equals or exceeds $550,000 and is at least 25 percent of the total subcontract's costs. The amount of the dollar charge to the FEHB Program shall be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act pursuant to 41 U.S.C. 254b(a)(7). Failure to provide advance notice may result in a Contracting officer's disallowance of subcontract costs or a penalty when considering the performance aspect of the carriers' service charge.

(1) All subcontracts or subcontract modifications that equal or exceed the threshold are subject to audit under FAR 52.215–2 ''Audit and Records-Negotiations'' if based on cost analysis, and subject to the provisions of 48 CFR 1646.301 and 1652.246–70 ''FEHB Inspection'' if based on price analysis.

(2) In determining whether the amount chargeable to the FEHB Program contract for a given subcontract or modification equals or exceeds the $550,000 threshold, the following rules apply:

(i) For initial advance notification, the carrier shall provide the total cost/price for the base year.

(ii) The carrier shall provide advance notification of any modifications, options, including quantity or service options and option periods, and renewals of ''evergreen contracts'' that cause the total price to equal or exceed the threshold. OPM's review will be of the modification(s), itself, but documentation for the original subcontract will be required to perform the review.

(iii) The $550,000 threshold will be adjusted by the same amount and at the

same time as any change to the threshold for application of the Truth in Negotiations Act.

[70 FR 31382, June 1, 2005, as amended at 71 FR 3016, Jan. 19, 2006]

Subpart 1644.2—Consent to Subcontracts

1644.270 FEHBP contract clause.

The clause set forth at section 1652.244–70 shall be inserted in all experience rated FEHBP contracts.

[62 FR 47576, Sept. 10, 1997]

PART 1645—GOVERNMENT PROPERTY

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 62 FR 47576, Sept. 10, 1997, unless otherwise noted.

Subpart 1645.3—Providing Equipment

1645.303–70 Contract clause.

The clause set forth in section 1652.245–70 shall be inserted in all FEHB Program contracts.

PART 1646—QUALITY ASSURANCE

Subpart 1646.2—Contract Quality Requirements

Sec.
1646.201 Contract Quality Policy.

Subpart 1646.3—Contract Clauses

1646.301 Contractor inspection requirements.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1646.2—Contract Quality Requirements

1646.201 Contract Quality Policy.

(a) This section prescribes general policies and procedures to ensure that services acquired under the FEHB contract conform to the contract's quality and audit requirements.

(b) OPM will periodically evaluate the contractor's system of internal controls under the quality assurance program required by the contract and will acknowledge in writing whether or not the system is consistent with the requirements set forth in the contract. After the initial review, subsequent reviews may be limited to changes in the contractor's internal control guidelines. However, a limited review does not diminish the contractor's obligation to apply the full internal control system.

(c) OPM will issue specific quality performance standards for the FEHB contracts and will inform carriers of the applicable standards prior to negotiations for the contract year. OPM will benchmark its standards against standards generally accepted in the insurance industry. The contracting officer may authorize nationally recognized standards to be used to fulfill this requirement. FEHB carriers will comply with the performance standards issued by OPM.

(d) In addition to reviewing carriers' quality assurance programs, OPM will periodically audit contractors, subcontractors and Large Providers' books and records to assure compliance with FEHB law, regulations, and the contract.

[70 FR 31382, June 1, 2005]

Subpart 1646.3—Contract Clauses

1646.301 Contractor inspection requirements.

The clause set forth at 1652.246–70 shall be inserted in all FEHBP contracts.

[52 FR 16044, May 1, 1987]

PART 1649—TERMINATION OF CONTRACTS

Sec.
1649.002–70 Applicability of the FAR to FEHB acquisitions.

Subpart 1649.1—General Principles

1649.101–70 FEHBP renewal and withdrawal of approval clause.
1649.101–71 FEHBP termination for convenience clause.
1649.101–72 FEHBP termination for default clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16044, May 1, 1987, unless otherwise noted.

1649.002–70 Applicability of the FAR to FEHB acquisitions.

(a) Termination of FEHB contracts because of withdrawal of approval is controlled by 5 U.S.C. 8902(e) and 5 CFR 890.204.

(b) Termination of FEHB contracts because of nonrenewal of the contract at the end of the contract term is controlled by 5 U.S.C. 8902(a) and 5 CFR 890.205.

(c) The procedures for settlement of contracts after they are terminated shall be those contained in FAR part 49.

[57 FR 19387, May 6, 1992]

Subpart 1649.1—General Principles

1649.101–70 FEHBP renewal and withdrawal of approval clause.

The clause in 1652.249–70 shall be inserted in all FEHBP contracts.

1649.101–71 FEHBP termination for convenience clause.

The clause set forth in 1652.249–71 shall be inserted in all FEHBP contracts.

[62 FR 47576, Sept. 10, 1997]

1649.101–72 FEHBP termination for default clause.

The clause set forth in 1652.249–72 shall be inserted in all FEHBP contracts.

[62 FR 47576, Sept. 10, 1997]

SUBCHAPTER H—CLAUSES AND FORMS

PART 1652—CONTRACT CLAUSES

Sec.
1652.000 Applicable clauses.

Subpart 1652.2—Texts of FEHBP Clauses

1652.203–70 Misleading, deceptive, or unfair advertising.
1652.204–70 Contractor records retention.
1652.204–71 Coordination of Benefits.
1652.204–72 Filing health benefit claims/court review of disputed claims.
1652.204–73 Taxpayer Identification Number.
1652.204–74 Large provider agreements.
1652.215–70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.
1652.215–71 Investment Income.
1652.216–70 Accounting and price adjustment.
1652.216–71 Accounting and Allowable Cost.
1652.222–70 Notice of significant events.
1652.224–70 Confidentiality of records.
1652.229–70 Taxes—Foreign Negotiated benefits contracts.
1652.232–70 Payments—community-rated contracts.
1652.232–71 Payments—experience-rated contracts.
1652.232–72 Non-commingling of FEHBP funds.
1652.232–73 Approval for the Assignment of Claims.
1652.243–70 Changes—Negotiated benefits contracts.
1652.244–70 Subcontracts.
1652.245–70 Government property (negotiated benefits contracts).
1652.246–70 FEHB Inspection.
1652.249–70 Renewal and withdrawal of approval.
1652.249–71 FEHBP termination for convenience of the government—negotiated benefits contracts.
1652.249–72 FEHBP termination for default—negotiated benefits contracts.

Subpart 1652.3—FEHBP Clause Matrix

1652.370 Use of the matrix.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16044, May 1, 1987, unless otherwise noted.

1652.000 Applicable clauses.

The clauses of FAR subpart 52.2 shall be applicable to FEHBP contracts as specified in the FEHBAR Clause Matrix in subpart 1652.3.

Section and Clause Title

52.202–1 Definitions.
52.203–3 Gratuities.
52.203–5 Covenant Against Contingent Fees.
52.203–7 Anti-Kickback Procedures.
52.203–12 Limitation on Payments to Influence Certain Federal Transactions.
52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.
52.215–2 Audit and Records—Negotiation.
52.215–22 Price Reduction for Defective Cost or Pricing Data.
52.215–24 Subcontractor Cost or Pricing Data.
52.215–27 Termination of Defined Benefit Pension Plans.
52.215–30 Facilities Capital Cost of Money.
52.215–31 Waiver of Facilities Capital Cost of Money.
52.215–39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).
52.219–8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.
52.222–1 Notice to the Government of Labor Disputes.
52.222–3 Convict Labor.
52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General.
52.222–21 Certification of Nonsegregated Facilities.
52.222–26 Equal Opportunity.
52.222–28 Equal Opportunity Preaward Clearance of Subcontracts.
52.222–29 Notification of Visa Denial.
52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
52.222–36 Affirmative Action for Handicapped Workers.
52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
52.223–2 Clean Air and Water.
52.223–6 Drug-Free Workplace.
52.227–1 Authorization and Consent.
52.227–2 Notice and Assistance Regarding Patent and Copyright Infringement.
52.229–3 Federal, State,and Local Taxes.
52.229–4 Federal, State, and Local Taxes (Noncompetitive Contract).
52.229–5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.
52.230–2 Cost Accounting Standards.
52.230–3 Disclosure and Consistency of Cost Accounting Practices.
52.230–5 Administration of Cost Accounting Standards.
52.232–8 Discounts for Prompt Payment.
52.232–17 Interest.

52.232–23 Assignment of Claims.
52.232–33 Mandatory Information For Electronic Funds Transfer Payment.
52.233–1 Disputes.
52.242–1 Notice of Intent to Disallow Costs.
52.242–3 Penalties for Unallowable Costs.
52.242–13 Bankruptcy.
52.244–5 Competition in Subcontracting.
52.244–6 Subcontracts for Commercial Items and Commercial Components.
52.246–25 Limitation of Liability—Services.
52.247–63 Preference for U.S.-Flag Air Carriers.
52.251–1 Government Supply Sources.
52.232–2 Clauses Incorporated by Reference.
52.252–4 Alterations in Contract.
52.252–6 Authorized Deviations in Clauses.

[62 FR 47576, Sept. 10, 1997]

Subpart 1652.2—Texts of FEHBP Clauses

1652.203–70 Misleading, deceptive, or unfair advertising.

As prescribed in 1603.7003, the following clause shall be inserted in all FEHBP contracts:

MISLEADING, DECEPTIVE, OR UNFAIR ADVERTISING (JAN 1991)

(a) The Carrier agrees that any advertising material, including that labeled promotional material, marketing material, or supplemental literature, shall be truthful and not misleading.

(b) Criteria to assess compliance with paragraph (a) of this clause are available in the FEHB Supplemental Literature Guidelines which are developed by OPM and should be used, along with the additional guidelines set forth in FEHBAR 1603.702, as the primary guide in preparing material; further guidance is provided in the NAIC ''Rules Governing Advertising of Accident and Sickness Insurance With Interpretive Guidelines.'' Guidelines are periodically updated and provided to the Carrier by OPM.

(c) Failure to conform to paragraph (a) of this clause may result in a reduction in the service charge, if appropriate, and corrective action to protect the interest of Federal Members. Corrective action will be appropriate to the circumstances and may include, but is not limited to the following actions by OPM:

(1) Directing the Carrier to cease and desist distribution, publication, or broadcast of the material;

(2) Directing the Carrier to issue corrections at the Carrier's expense and in the same manner and media as the original material was made; and

(3) Directing the Carrier to provide, at the Carrier's expense, the correction in writing by certified mail to all enrollees of the Plan(s) that had been the subject of the original material.

(d) Egregious or repeated offenses may result in the following action by OPM:

(1) Suspending new enrollments in the Carrier's Plan(s);

(2) Providing Enrollees an opportunity to transfer to another plan; and

(3) Terminating the contract in accordance with Section 1.15, Renewal and Withdrawal of Approval.

(e) Prior to taking action as described in paragraphs (c) and (d) of this clause, the OPM will notify the Carrier and offer an opportunity to respond.

(f) The Carrier shall incorporate this clause in subcontracts with its underwriter, if any, and other subcontractors directly involved in the preparation or distribution of such advertising material and shall substitute ''Contractor'' or other appropriate reference for the term ''Carrier.''

(End of clause)

[55 FR 27415, July 2, 1990, as amended at 62 FR 47576, Sept. 10, 1997]

1652.204–70 Contractor records retention.

As prescribed in 1604.705 the following clause will be inserted in all FEHB Program contracts.

CONTRACTOR RECORDS RETENTION (JUL 2005)

Notwithstanding the provisions of Section 5.7 (FAR 52.215–2(f)) ''Audit and Records—Negotiation'' the carrier will retain and make available all records applicable to a contract term that support the annual statement of operations and, for contracts that equal or exceed the threshold at FAR 15.403–4(a)(1), the rate submission for that contract term for a period of six years after the end of the contract term to which the records relate. This includes all records of Large Provider Agreements and subcontracts that equal or exceed the threshold requirements. In addition, individual enrollee and/or patient claim records will be maintained for six years after the end of the contract term to which the claim records relate. This clause is effective prospectively as of the 2005 contract year.

(End of clause)

[70 FR 31382, June 1, 2005, as amended at 71 FR 3016, Jan. 19, 2006]

1652.204–71 Coordination of Benefits.

As prescribed in 1604.7001, the following clause shall be inserted in all FEHBP contracts:

COORDINATION OF BENEFITS (JAN 1991)

(a) The Carrier shall coordinate the payment of benefits under this contract with the payment of benefits under Medicare, other group health benefits coverages, and the payment of medical and hospital costs under no-fault or other automobile insurance that pays benefits without regard to fault.

(b) The Carrier shall not pay benefits under this contract until it has determined whether it is the primary carrier or unless permitted to do so by the Contracting Officer.

(c) In coordinating benefits between plans, the Carrier shall follow the order of precedence established by the NAIC Model Guidelines for Coordination of Benefits (COB) as specified by OPM.

(d) Where (1) the Carrier makes payments under this contract which are subject to COB provisions; (2) the payments are erroneous, not in accordance with the terms of the contract, or in excess of the limitations applicable under this contract; and (3) the Carrier is unable to recover such COB overpayments from the Member or the providers of services or supplies, the Contracting Officer may allow such amounts to be charged to the contract; the Carrier must be prepared to demonstrate that it has made a diligent effort to recover such COB overpayments.

(e) COB savings shall be reported by experience rated carriers each year along with the Carrier's annual accounting statement in a form specified by OPM.

(f) Changes in the order of precedence established by the NAIC Model Guidelines implemented after January 1 of any given year shall be required no earlier than the beginning of the following contract term.

(End of clause)

[55 FR 27415, July 2, 1990]

1652.204–72 Filing health benefit claims/court review of disputed claims.

As prescribed in 1604.7101 of this chapter, the following clause must be inserted in all FEHB Program contracts.

FILING HEALTH BENEFIT CLAIMS/COURT REVIEW OF DISPUTED CLAIMS (MAR 1995)

(a) *General.* (1) The Carrier resolves claims filed under the Plan. All health benefit claims must be submitted initially to the Carrier. If the Carrier denies a claim (or a portion of a claim), the covered individual may ask the Carrier to reconsider its denial. If the Carrier affirms its denial or fails to respond as required by paragraph (b) of this clause, the covered individual may ask OPM to review the claim. A covered individual must exhaust both the Carrier and OPM review processes specified in this clause before seeking judicial review of the denied claim.

(2) This clause applies to covered individuals and to other individuals or entities who are acting on the behalf of a covered individual and who have the covered individual's specific written consent to pursue payment of the disputed claim.

(b) *Time limits for reconsidering a claim.* (1) The covered individual has 6 months from the date of the notice to the covered individual that a claim (or a portion of a claim) was denied by the Carrier in which to submit a written request for reconsideration to the Carrier. The time limit for requesting reconsideration may be extended when the covered individual shows that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

(2) The Carrier has 30 days after the date of receipt of a timely-filed request for reconsideration to:

(i) Affirm the denial in writing to the covered individual;

(ii) Pay the bill or provide the service; or

(iii) Request from the covered individual or provider additional information needed to make a decision on the claim. The Carrier must simultaneously notify the covered individual of the information requested if it requests additional information from a provider. The Carrier has 30 days after the date the information is received to affirm the denial in writing to the covered individual or pay the bill or provide the service. The Carrier must make its decision based on the evidence it has if the covered individual or provider does not respond within 60 days after the date of the Carrier's notice requesting additional information. The Carrier must then send written notice to the covered individual of its decision on the claim. The covered individual may request OPM review as provided in paragraph (b)(3) of this clause if the Carrier fails to act within the time limit set forth in this paragraph.

(3) The covered individual may write to OPM and request that OPM review the Carrier's decision if the Carrier either affirms its denial of a claim or fails to respond to a covered individual's written request for reconsideration within the time limit set forth in paragraph (b)(2) of this clause. The covered individual must submit the request for OPM review within the time limit specified in paragraph (e)(1) of this clause.

(4) The Carrier may extend the time limit for a covered individual's submission of additional information to the Carrier when the covered individual shows he or she was not notified of the time limit or was prevented by circumstances beyond his or her control from submitting the additional information.

(c) *Information required to process requests for reconsideration.* (1) The covered individual

must put the request to the Carrier to reconsider a claim in writing and give the reasons, in terms of applicable brochure provisions, that the denied claim should have been approved.

(2) If the Carrier needs additional information from the covered individual to make a decision, it must:

(i) Specifically identify the information needed;

(ii) State the reason the information is required to make a decision on the claim;

(iii) Specify the time limit (60 days after the date of the Carrier's request) for submitting the information; and

(iv) State the consequences of failure to respond within the time limit specified, as set out in paragraph (b)(2) of this section.

(d) *Carrier determinations.* The Carrier must provide written notice to the covered individual of its determination. If the Carrier affirms the initial denial, the notice must inform the covered individual of:

(1) The specific and detailed reasons for the denial;

(2) The covered individual's right to request a review by OPM; and

(3) The requirement that requests for OPM review must be received within 90 days after the date of the Carrier's denial notice and include a copy of the denial notice as well as documents to support the covered individual's position.

(e) *OPM review.* (1) If the covered individual seeks further review of the denied claim, the covered individual must make a request to OPM to review the Carrier's decision. Such a request to OPM must be made:

(i) Within 90 days after the date of the Carrier's notice to the covered individual that the denial was affirmed; or

(ii) If the Carrier fails to respond to the covered individual as provided in paragraph (b)(2) of this clause, within 120 days after the date of the covered individual's timely request for reconsideration by the Carrier; or

(iii) Within 120 days after the date the Carrier requests additional information from the covered individual, or the date the covered individual is notified that the Carrier is requesting additional information from a provider. OPM may extend the time limit for a covered individual's request for OPM review when the covered individual shows he or she was not notified of the time limit or was prevented by circumstances beyond his or her control from submitting the request for OPM review within the time limit.

(2) In reviewing a claim denied by the Carrier, OPM may:

(i) Request that the covered individual submit additional information;

(ii) Obtain an advisory opinion from an independent physician;

(iii) Obtain any other information as may in its judgment be required to make a determination; or

(iv) Make its decision based solely on the information the covered individual provided with his or her request for review.

(3) When OPM requests information from the Carrier, the Carrier must release the information within 30 days after the date of OPM's written request unless a different time limit is specified by OPM in its request.

(4) Within 90 days after receipt of the request for review, OPM will either:

(i) Give a written notice of its decision to the covered individual and the Carrier; or

(ii) Notify the individual of the status of the review. If OPM does not receive requested evidence within 15 days after expiration of the applicable time limit in paragraph (e)(3) of this clause, OPM may make its decision based solely on information available to it at that time and give a written notice of its decision to the covered individual and to the Carrier.

(f) OPM, upon its own motion, may reopen its review if it receives evidence that was unavailable at the time of its original decision.

(g) *Court review.* (1) A suit to compel enrollment under §890.102 of Title 5, Code of Federal Regulations, must be brought against the employing office that made the enrollment decision.

(2) A suit to review the legality of OPM's regulations under this part must be brought against the Office of Personnel Management.

(3) Federal Employees Health Benefits (FEHB) carriers resolve FEHB claims under authority of Federal statute (chapter 89, title 5, United States Code). A covered individual may seek judicial review of OPM's final action on the denial of a health benefits claim. A legal action to review final action by OPM involving such denial of health benefits must be brought against OPM and not against the Carrier or the Carrier's subcontractors. The recovery in such a suit shall be limited to a court order directing OPM to require the Carrier to pay the amount of benefits in dispute.

(4) An action under paragraph (3) of this clause to recover on a claim for health benefits:

(i) May not be brought prior to exhaustion of the administrative remedies provided in paragraphs (a) through (f) of this clause;

(ii) May not be brought later than December 31 of the 3rd year after the year in which the care or service was provided; and

(iii) Will be limited to the record that was before OPM when it rendered its decision affirming the Carrier's denial of benefits.

(End of clause)

[61 FR 15198, Apr. 5, 1996, as amended at 62 FR 47576, Sept. 10, 1997]

1652.204–73 Taxpayer Identification Number.

As prescribed in 1604.970, insert the following clause.

TAXPAYER IDENTIFICATION NUMBER (JAN 2000)

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

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Carrier in reporting income tax and other returns.

(b) The Carrier must submit the information required in paragraphs (d) through (f) of this clause to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. The Carrier is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904. The Carrier's failure or refusal to furnish the information will result in payment being withheld until the TIN number is provided.

(c) The Government may use the TIN to collect and report on any delinquent amounts arising out of the Carrier's relationship with the Government (31 U.S.C. 7701(c)(3)). The TIN provided hereunder may be matched with IRS records to verify its accuracy.

(d) Taxpayer Identification Number (TIN).

TIN:_____

(e) Type of organization.

☐ Sole proprietorship;
☐ Partnership;
☐ Corporate entity (not tax-exempt);
☐ Corporate entity (tax-exempt);
☐ Other _____.

(f) Common parent.

☐ Carrier is not owned or controlled by a common parent as defined in paragraph (a) of this clause.
☐ Name and TIN of common parent:

Name _____
TIN _____

(End of clause)

[65 FR 36386, June 8, 2000]

1652.204–74 Large provider agreements.

As prescribed by 1604.7202, the contracting officer will insert the following clause in all FEHB Program contracts based on cost analysis (experience-rated):

LARGE PROVIDER AGREEMENTS (OCT 2005)

(a) *Notification and Information Requirements.* (1) The experience-rated Carrier must provide notice to the contracting officer of its intent to enter into or to make a significant modification of a Large Provider Agreement:

(i) Not less than 60 days before entering into any Large Provider Agreement; and

(ii) Not less than 60 days before exercising a renewal or other option, or significant modification to a Large Provider Agreement, when such action would result in total costs to the FEHB Program of an additional 20 percent or more above the existing contract. However, if a carrier is exercising a simple renewal or other option contemplated by a Large Provider Agreement that OPM previously reviewed, and there are no significant changes, then a statement to the effect that the renewal or other option is being exercised along with the dollar amount is sufficient notice.

(2) The carrier's notification to the contracting officer must be in writing and must, at a minimum:

(i) Describe the supplies and/or services the proposed provider agreement will require;

(ii) Identify the proposed basis for reimbursement;

(iii) Identify the proposed provider agreement, explain why the carrier selected the proposed provider, and what contracting method it used, where applicable, including the kind of competition obtained;

(iv) Describe the methodology the carrier used to compute the provider's profit; and,

(v) Describe provider risk provisions.

(3) The Contracting officer may request from the carrier any additional information on a proposed provider agreement and its terms and conditions prior to a provider award and during the performance of the agreement.

(4) Within 30 days of receiving the carrier's notification, the Contracting officer will give the carrier either written comments or written notice that there will be no comments. If the Contracting officer comments, the carrier must respond in writing within 10 calendar days, and explain how it intends to address any concerns.

(5) When computing the carrier's service charge, the Contracting officer will consider how well the carrier complies with the provisions of this section, including the advance notification requirements, as an aspect of the carrier's performance factor.

(6) The Contracting officer's review of any Large Provider Agreement, option, renewal, or modification will not constitute a determination of the acceptability of the terms and conditions of any provider agreement or

of the allowability of any costs under the carrier's contract, nor will it relieve the carrier of any responsibility for performing the contract.

(b) *Records and Inspection*. The carrier must insert in all Large Provider Agreements the requirement that the provider will retain and make available to the Government all records relating to the agreement that support the annual statement of operations and enrollee records—Retain for 6 years after the agreement term ends.

(c) *Audit and Records—Negotiation*. The provisions of FAR 52.215–2, ''Audit and Records—Negotiation,'' when required, or FEHBAR 1652.246–70, ''FEHB Inspection'' apply to all experience-rated Carriers' Large Provider Agreements. The Carrier will insert the clauses at FAR 52.215–2, when applicable, or FEHBAR 1652.246–70 in all Large Provider Agreements. In FAR 52.215–2 the carrier will substitute:

(1) The term ''Large Provider'' for the term ''Contractor'' throughout the clause, and

(2) The term ''Large Provider Agreement'' for the term ''Subcontracts'' in paragraph (g) of FAR 52.215–2. The term ''Contracting officer'' will mean the FEHB Program Contracting officer at OPM. The carrier will be responsible for ensuring the Large Provider complies with the provisions set forth in the clause.

(d) *Prohibited Agreements*. No provider agreement made under this contract will provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The carrier will insert this clause, 1652.204–74, in all Large Provider Agreements.

(End of clause)

[70 FR 31382, June 1, 2005, as amended at 71 FR 3016, Jan. 19, 2006]

1652.215–70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

As prescribed in 1615.407–1, the following clause shall be inserted in FEHBP contracts exceeding the threshold at FAR 15.403–4(a)(1) that are based on a combination of cost and price analysis (community rated):

RATE REDUCTION FOR DEFECTIVE PRICING OR DEFECTIVE COST OR PRICING DATA (JAN 2004)

(a) If any rate established in connection with this contract was increased because (1) the Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not complete, accurate, or current as certified in the Certificate of Accurate Cost or Pricing Data (FEHBAR 1615.406–2); (2) the Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not accurate as represented in the rate proposal documents; (3) the Carrier developed FEHBP rates with a rating methodology and structure inconsistent with that used to develop rates for similarly sized subscriber groups (see FEHBAR 1602.170–13) as certified in the Certificate of Accurate Cost or Pricing Data for Community Rated Carriers; or (4) the Carrier submitted or, or kept in its files in support of the FEHBP rate, data or information of any description that were not complete, accurate, and current—then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information.

(b)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Carrier agrees not to raise the following matters as a defense:

(i) The Carrier was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted or maintained and identified.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Carrier took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Carrier did not submit or keep in its files a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (b)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Carrier certifies to the Contracting Officer that, to the best of the Carrier's knowledge and belief, the Carrier is entitled to the offset in the amount requested; and

(B) The Carrier proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Carrier to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset

even if the available data had been submitted before the date of agreement on price.

(c) When the Contracting Officer determines that the rates shall be reduced and the Government is thereby entitled to a refund, the Carrier shall be liable to and shall pay the FEHB Fund at the time the overpayment is repaid—

(1) Simple interest on the amount of the overpayment from the date the overpayment was paid from the FEHB Fund to the Carrier until the date the overcharge is liquidated. In calculating the amount of interest due, the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods the overcharge was retained by the Carrier shall be used; and,

(2) A penalty equal to the amount of overpayment, if the Carrier knowingly submitted cost or pricing data which was incomplete, inaccurate, or noncurrent.

(End of clause)

[62 FR 47576, Sept. 10, 1997, as amended at 64 FR 36273, July 6, 1999; 65 FR 36387, June 8, 2000; 70 FR 31383, June 1, 2005]

1652.215–71 Investment Income.

As prescribed in 1615.470–1, the following clause shall be inserted in all FEHBP contracts based on cost analysis:

INVESTMENT INCOME (JAN 1998)

(a) The Carrier shall invest and reinvest all FEHB funds on hand that are in excess of the funds needed to promptly discharge the obligations incurred under this contract. The Carrier shall seek to maximize investment income with prudent consideration to the safety and liquidity of investments.

(b) All investment income earned on FEHB funds shall be credited to the Special Reserve on behalf of the FEHBP.

(c) When the Contracting Officer concludes that the Carrier failed to comply with paragraph (a) or (b) of this clause, the Carrier shall credit the Special Reserve with investment income that would have been earned, at the rate(s) specified in paragraph (f) of this clause, had it not been for the Carrier's noncompliance. ''Failed to comply with paragraph (a) or (b)'' means: (1) Making any charges against the contract which are not allowable, allocable, or reasonable; or (2) failing to credit any income due the contract and/or failing to place excess funds, including subscription income and payments from OPM not needed to discharge promptly the obligations incurred under the contract, refunds, credits, payments, deposits, investment income earned, uncashed checks, or other amounts owed the Special Reserve, in income producing investments and accounts.

(d) Investment income lost as a result of unallowable, unallocable, or unreasonable charges against the contract shall be paid from the 1st day of the contract term following the contract term in which the unallowable charge was made and shall end on the earlier of: (1) The date the amounts are returned to the Special Reserve (or the Office of Personnel Management); (2) the date specified by the Contracting Officer; or, (3) the date of the Contracting Officer's Final Decision.

(e) Investment income lost as a result of failure to credit income due the contract or failure to place excess funds in income producing investments and accounts shall be paid from the date the funds should have been invested or appropriate income was not credited and shall end on the earlier of: (1) The date the amounts are returned to the Special Reserve (or the Office of Personnel Management); (2) the date specified by the Contracting Officer; or, (3) the date of the Contracting Officer's Final Decision.

(f) The Carrier shall credit the Special Reserve for income due in accordance with this clause. All lost investment income payable shall bear simple interest at the quarterly rate determined by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods in which the amount becomes due, as provided in paragraphs (d) and (e) of this clause.

(g) The Carrier shall incorporate this clause into agreements with underwriters of the Carrier's FEHB plan and shall substitute ''underwriter'' or other appropriate reference for the term ''Carrier.''

(End of clause)

[55 FR 27416, July 2, 1990, as amended at 62 FR 47577, Sept. 10, 1997; 70 FR 31383, June 1, 2005]

1652.216–70 Accounting and price adjustment.

As prescribed in section 1616.7001, the following clause shall be inserted in all FEHBP contracts based on a combination of cost and price analysis (community rated).

ACCOUNTING AND PRICE ADJUSTMENT (JAN 2003)

(a) *Annual Accounting Statement*. The Carrier, not later than 90 days after the end of each contract period, shall furnish to OPM for that contract period an accounting of its operations under the contract. The accounting shall be in the form prescribed by OPM.

(b) *Adjustment*. (1) This contract is community rated as defined in FEHBAR 1602.170–2.

(2) The subscription rates agreed to in this contract shall be based on paragraphs (b)(2)(i) or (ii) of this clause. Effective January 1, 2013 all community rated plans must base their rating methodology on the medical loss ratio (MLR) threshold described in paragraph (b)(2)(i) of this clause unless traditional community rating is mandated in the state where they are domiciled:

(i) The subscription rates agreed to in this contract shall meet the FEHB-specific MLR threshold as defined in FEHBAR 1602.170–14. The ratio of a plan's incurred claims, including the issuer's expenditures for activities that improve health care quality, to total premium revenue shall not be lower than the FEHB-specific MLR threshold published annually by OPM in its rate instructions.

(ii) The subscription rates agreed to in this contract shall be equivalent to the subscription rates given to the carrier's similarly sized subscriber groups (SSSGs) as defined in FEHBAR 1602.170–13. The subscription rates shall be determined according to the carrier's established policy, which must be applied consistently to the FEHBP and to the carrier's SSSGs. If an SSSG receives a rate lower than that determined according to the carrier's established policy, it is considered a discount. The FEHBP must receive a discount equal to or greater than the carrier's largest SSSG discount.

(3) If the rates are determined by SSSG comparison, then:

(i) If, at the time of the rate reconciliation, the subscription rates are found to be lower than the equivalent rates for the lower of the two SSSGs, the carrier may include an adjustment to the Federal group's rates for the next contract period, except as noted in paragraph (b)(3)(iii) of this clause.

(ii) If, at the time of the rate reconciliation, the subscription rates are found to be higher than the equivalent rates for the lower of the two SSSGs, the carrier shall reimburse the Fund, for example, by reducing the FEHB rates for the next contract term to reflect the difference between the estimated rates and the rates which are derived using the methodology of the lower rated SSSG, except as noted in paragraph (b)(3)(iii) of this clause.

(iii) Carriers may provide additional guaranteed discounts to the FEHBP that are not given to SSSGs. Any such guaranteed discounts must be clearly identified as guaranteed discounts. After the beginning of the contract year for which the rates are set, these guaranteed FEHBP discounts may not be adjusted.

(4) If rates are determined by comparison with the FEHB-specific MLR threshold, then if the MLR for the carrier's FEHB plan is found to be lower than the published FEHB-specific MLR threshold, the carrier must pay a subsidization penalty equal to the difference into a subsidization penalty account.

(5) The following apply to community rated plans, regardless of the rating methodology:

(i) No upward adjustment in the rate established for this contract will be allowed or considered by the Government or will be made by the Carrier in this or in any other contract period on the basis of actual costs incurred, actual benefits provided, or actual size or composition of the FEHBP group during this contract period.

(ii) For contract years beginning on or after January 1, 2009, in the event this contract is not renewed, the final rate reconciliation will be performed. The carrier must promptly pay any amount owed to OPM. Any amount recoverable by the carrier is limited to the amount in the contingency reserve for the terminating plan as of December 31 of the terminating year.

(iii) Carriers may not impose surcharges (loadings not defined based on an established rating method) on the FEHBP subscription rates or use surcharges in the rate reconciliation process in any circumstance.

(6) For contract years beginning on or after January 1, 2009, in the event this contract is not renewed, the final rate reconciliation will be performed. The carrier must promptly pay any amount owed to OPM. Any amount recoverable by the carrier is limited to the amount in the contingency reserve for the terminating plan as of December 31 of the terminating year.

(7) Carriers may provide additional guaranteed discounts to the FEHBP that are not given to SSSGs. Any such guaranteed discounts must be clearly identified as guaranteed discounts. After the beginning of the contract year for which the rates are set, these guaranteed FEHBP discounts may not be adjusted.

(8) Carriers may not impose surcharges (loadings not defined based on an established rating method) on the FEHBP subscription rates or use surcharges in the rate reconciliation process irrespective of whether surcharges are applied to the SSSGs.

(End of clause)

[62 FR 47577, Sept. 10, 1997, as amended at 64 FR 36273, July 6, 1999; 65 FR 36387, June 8, 2000; 70 FR 31383, June 1, 2005; 74 FR 7824, Feb. 20, 2009; 76 FR 38286, June 29, 2011; 77 FR 19525, Apr. 2, 2012]

1652.216–71 Accounting and Allowable Cost.

As prescribed in section 1616.7002, the following clause shall be inserted in all FEHBP contracts based on cost analysis (experience rated).

ACCOUNTING AND ALLOWABLE COST (FEHBAR 1652.216–71) (JAN 2003)

(a) *Annual Accounting Statements.* (1) The Carrier shall furnish to OPM an accounting of its operations under the contract. In preparing the accounting, the Carrier shall follow the reporting requirements and statement formats prescribed by OPM in the OPM Annual and Fiscal Year Financial Reporting Instructions.

(2) The Carrier shall have its Annual Accounting Statements and that of its underwriter, if any, audited in accordance with the FEHBP Experienced-Rated Carrier and Service Organization Audit Guide (Guide). The Carrier shall submit the audit report and the Annual Accounting Statements to OPM in accordance with the requirements of the Guide.

(3) Based on the results of either the independent audit prescribed by the Guide or a Government audit, OPM may require the Carrier adjust its annual accounting statements (i) by amounts found not to constitute actual, allowable, allocable and reasonable costs; or (ii) to reflect prior overpayments or underpayments.

(4) The Carrier shall develop corrective action plans to resolve audit findings identified in audits that were performed in accordance with the Guide. The corrective action plans will be prepared in accordance with and as defined by the Guide.

(b) *Definition of costs.* (1) The Carrier may charge a cost to the contract for a contract term if the cost is actual, allowable, allocable, and reasonable. In addition, the Carrier must:

(i) on request, document and make available accounting support for the cost to justify that the cost is actual, reasonable and necessary; and

(ii) determine the cost in accordance with: (A) the terms of this contract, and (B) subpart 31.2 of the Federal Acquisition Regulation (FAR) and subpart 1631.2 of the Federal Employees Health Benefits Program Acquisition Regulation (FEHBAR) applicable on the first day of the contract period.

(2) In the absence of specific contract terms to the contrary, the Carrier shall classify contract costs in accordance with the following criteria:

(i) *Benefits.* Benefit costs consist of payments made and liabilities incurred for covered health care services on behalf of FEHBP subscribers less any refunds, rebates, allowances or other credits received.

(ii) *Administrative expenses.* Administrative expenses consist of all actual, allowable, allocable and reasonable expenses incurred in the adjudication of subscriber benefit claims or incurred in the Carrier's overall operation of the business. Unless otherwise stated in the contract, administrative expenses include, in part: all taxes (excluding premium taxes, as provided in section 1631.205–41), insurance and reinsurance premiums, medical and dental consultants used in the adjudication process, concurrent or managed care review when not billed by a health care provider and other forms of utilization review, the cost of maintaining eligibility files, legal expenses incurred in the litigation of benefit payments and bank charges for letters of credit. Administrative expenses exclude the cost of Carrier personnel, equipment, and facilities directly used in the delivery of health care services, which are benefit costs, and the expense of managing the FEHBP investment program which is a reduction of investment income earned.

(iii) *Investment income.* While compliance with the checks presented letter of credit methodology will minimize funds on hand, the Carrier shall invest and reinvest all funds on hand, including any in the Special Reserve or any attributable to the reserve for incurred but unpaid claims, which are in excess of the funds needed to discharge promptly the obligations incurred under the contract. Investment income represents the net amount earned by the Carrier after deducting investment expenses. Investment expenses are those actual, allowable, allocable, and reasonable contract costs that are attributable to the investment of funds, such as consultant or management fees.

(iv) *Other charges.* (A) *Mandatory statutory reserve.* Charges for mandatory statutory reserves are not allowable unless specifically provided for in the contract. When the term ''mandatory statutory reserve'' is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law upon the Carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the Carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the Carrier, the Carrier shall return to the FEHBP a pro rata share based upon FEHBP's contribution to the total Carrier's set aside shall be returned to the FEHBP in accordance with FAR 31.201–5.

(B) *Premium taxes.* (1) When the term ''premium taxes'' is used in this contract without further definition or explanation, it means a tax, fee, or other monetary payment directly or indirectly imposed on FEHB premiums by any State, the District of Columbia, or the

Commonwealth of Puerto Rico or by any political subdivision or other governmental authority of those entities, with the sole exception of a tax on net income or profit, if that tax, fee, or payment is applicable to a broad range of business activity.

(2) For purposes of this paragraph (B), OPM has determined that the term ''State'' as used in 5 U.S.C. 8909(f) includes, but is not limited to, a territory or possession of the United States.

(c) *Certification of Accounting Statement Accuracy*. (1) The Carrier shall certify the annual and fiscal year accounting statements in the form set forth in paragraph (c)(3) of this clause. The Carrier's chief executive officer and the chief financial officer shall sign the certificate.

(2) The Carrier shall require an authorized agent of its underwriter, if any, also to certify the annual accounting statement.

(3) The certificate required shall be in the following form:

CERTIFICATION OF ACCOUNTING STATEMENT ACCURACY

This is to certify that I have reviewed this accounting statement and to the best of my knowledge and belief:

1. The statement was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this reporting period in conformity with those guidelines.

2. The costs included in the statement are actual, allowable, allocable, and reasonable in accordance with the terms of the contract and with the cost principles of the Federal Employees Health Benefits Acquisition Regulation and the Federal Acquisition Regulation;

3. Income, rebates, allowances, refunds and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement;

4. If applicable, the letter of credit account was managed in accordance with 5 CFR part 890, 48 CFR chapter 16, and OPM guidelines.

Carrier Name: _____

Name of Chief Executive Officer:
(Type or Print)

_____

Name of Chief Financial Officer:

_____

Signature of Chief Executive Officer:

_____

Signature of Chief Financial Officer:

_____

Date Signed: _____

Date Signed: _____

Underwriter: _____

Name and Title of Responsible Corporate Official:

(Type or Print:)

_____

Signature of Responsible Corporate Official:

_____

Date Signed: _____

(End of certificate)

(End of clause)

[55 FR 27416, July 2, 1990, as amended at 56 FR 57497, Nov. 12, 1991; 57 FR 14360, Apr. 20, 1992; 62 FR 47577, Sept. 10, 1997; 64 FR 36273, July 6, 1999; 65 FR 36387, June 8, 2000; 70 FR 31383, June 1, 2005]

1652.222–70 Notice of significant events.

As prescribed in 1622.103–70, the following clause shall be inserted in all FEHBP contracts.

NOTICE OF SIGNIFICANT EVENTS (JUL 2005)

(a) The Carrier agrees to notify OPM of any Significant Event within ten (10) working days after the Carrier becomes aware of it. As used in this section, a Significant Event is any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon the Carrier's ability to meet its obligations under this contract, including, but not limited to, any of the following:

(1) Disposal of major assets;

(2) Loss of 15% or more of the Carrier's overall membership;

(3) Termination or modification of any contract or subcontract if such termination or modification might have a material effect on the Carrier's obligations under this contract;

(4) Addition or termination of provider agreements;

(5) Any changes in underwriters, reinsurers, or participating plans;

(6) The imposition of, or notice of the intent to impose, a receivership, conservatorship, or special regulatory monitoring;

(7) The withdrawal of, or notice of intent to withdraw, State licensing, HHS qualification, or any other status under Federal or State law;

(8) Default on a loan or other financial obligation;

(9) Any actual or potential labor dispute that delays or threatens to delay timely performance or substantially impairs the functioning of the Carrier's facilities or facilities used by the Carrier in the performance of the contract;

(10) Any change in its charter, constitution, or by-laws which affects any provision of this contract or the Carrier's participation in the Federal Employees Health Benefits Program; or

(11) Any significant changes in policies and procedures or interpretations of the contract or brochure which would affect the benefits available under the contract or the costs charged to the contract.

(12) Any fraud, embezzlement or misappropriation of FEHB funds; or

(13) Any written exceptions, reservations or qualifications expressed by the independent accounting firm (which ascribes to the standards of the American Institute of Certified Public Accountants) contracted with by the Carrier to provide an opinion on its annual financial statements.

(b) Upon learning of a Significant Event OPM may institute action, in proportion to the seriousness of the event, to protect the interest of Members, including, but not limited to—

(1) Directing the Carrier to take corrective action;

(2) Suspending new enrollments under this contract;

(3) Advising Enrollees of the Significant Event and providing them an opportunity to transfer to another plan;

(4) Withholding payment of subscription income or restricting access to the Carrier's Letter of Credit account.

(5) Terminating the enrollment of those enrollees who, in the judgment of OPM, would be adversely affected by the Significant Event; or

(6) Terminating this contract pursuant to section 1.15, renewal and withdrawal of approval.

(c) Prior to taking action as described in paragraph (b) of this clause, the OPM will notify the Carrier and offer an opportunity to respond.

(d) The carrier will insert this clause in any subcontract or subcontract modification if the amount of the subcontract or modification charged to the FEHB Program (or in the case of a community-rated carrier, applicable to the FEHB Program) equals or exceeds $550,000 and is at least 25 percent of the total subcontract cost. The amount of the dollar charge to the FEHB Program shall be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act pursuant to 41 U.S.C. 254b(a)(7).

(End of clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27417, July 2, 1990; 70 FR 31383, June 1, 2005; 71 FR 3016, Jan. 19, 2006]

1652.224–70 Confidentiality of records.

As prescribed in 1624.104, the following clause shall be inserted in all FEHBP contracts:

CONFIDENTIALITY OF RECORDS (JAN 1991)

(a) The Carrier shall use the personal data on employees and annuitants that is provided by agencies and OPM, including social security numbers, for only those routine uses stipulated for the data and published annually in the FEDERAL REGISTER as a part of OPM's notice of systems of records.

(b) The Carrier shall also hold all medical records, and information relating thereto, of Federal subscribers and family members confidential except as follows:

(1) As may be reasonably necessary for the administration of this contract;

(2) As authorized by the patient or his or her guardian;

(3) As disclosure is necessary to permit Government officials having authority to investigate and prosecute alleged civil or criminal actions;

(4) As necessary to audit the contract;

(5) As necessary to carry out the coordination of benefits provisions of this contract; and

(6) For bona fide medical research or educational purposes. Release of information for medical research or educational purposes shall be limited to aggregated information of a statistical nature that does not identify any individual by name, social security number, or any other identifier unique to an individual.

(c) If the carrier uses medical records for the administration of the contract, or for bona fide medical research or educational purposes, it shall so state in the plan's brochure.

(End of clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27417, July 2, 1990]

1652.229–70 Taxes—Foreign Negotiated benefits contracts.

As prescribed in section 1629.402, the following clause shall be inserted in all FEHBP contracts performed outside the United States, its possessions, and Puerto Rico:

TAXES—FOREIGN NEGOTIATED BENEFITS CONTRACTS (JAN 1998)

(a) To the extent that this contract provides for performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) ''Contract date,'' as used in this clause, means the effective date of this contract or modification.

''Country concerned,'' as used in this clause, means any country, other than the United States, its possessions, and Puerto

Rico, in which expenditures under this contract are made.

''Tax'' and ''taxes,'' as used in this clause, include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

''All applicable taxes and duties,'' as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

''After-imposed tax,'' as used in this clause, means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions covered by this contract that the Carrier is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

''After-relieved tax,'' as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions covered by this contract, but which the Carrier is not required to pay or bear, or for which the Carrier obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

''Excepted tax,'' as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. ''Excepted tax'' does not include gross income taxes levied on or measured by sales or receipts from sales covered by this contract, or any tax assessed on the Carrier's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(d) The contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Carrier is required to pay or bear, including any interest or penalty, if the Carrier states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Carrier's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Carrier incident to a refund of taxes to the extent that such interest was earned after the Carrier was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the Carrier to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Carrier is required to pay or bear, or does not obtain a refund of, through the Carrier's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $250.

(h) If the Carrier obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Carrier shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Carrier, any subcontractor, or the transactions covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Carrier shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Carrier at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(End of clause)

[62 FR 47577, Sept. 10, 1997]

1652.232–70 Payments—community-rated contracts.

As prescribed in 1632.171, the following clause shall be inserted in all community-rated FEHBP contracts:

PAYMENTS (JAN 2000)

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, amounts assessed under FEHBAR 1609.7101–2, and amounts for obligations due pursuant to paragraph (b) of this clause, plus any payments made by OPM from the Contingency Reserve.

(b) OPM will notify the Carrier of amounts due for outstanding obligations under the contract. Not later than 60 days after the date of written notice from OPM, the Carrier shall reimburse OPM. If payment is not received within the prescribed time frame, OPM shall withhold the amount due from the subscription charges owed the Carrier under paragraph (a) of this clause.

(c) The specific subscription rates, charges, allowances and limitations applicable to the contract are set forth in Appendix B.

(d) Recurring payments from premiums shall be due and payable not later than thirty days after receipt by the Fund. The Contracting Officer may authorize special nonrecurring payments from the Contingency Reserve in accordance with OPM's regulations.

(e) In the event this contract between the Carrier and OPM is terminated or not renewed in accordance with General Provision 1.15, RENEWAL and WITHDRAWAL OF APPROVAL, the Contingency Reserve of the Carrier held by OPM shall be available to the Carrier to pay the necessary and proper charges against this contract to the extent that the reserves held by the Carrier are insufficient for that purpose.

(f) *Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).* The Carrier may, at its discretion, request funds from the Employees Health Benefits Fund to mitigate excessive costs in relation to premiums. If the Carrier requests funds from the Employees Health Benefits Fund to mitigate risk, it will be required to perform annual reconciliations for the duration of the demonstration project. OPM will reimburse the Carrier's costs significantly in excess of the premiums first from the Carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project.

(End of clause)

[53 FR 51784, Dec. 23, 1988, as amended at 57 FR 14360, Apr. 20, 1992; 62 FR 47578, Sept. 10, 1997; 63 FR 55339, Oct. 15, 1998; 65 FR 36388, June 8, 2000]

1652.232–71 Payments—experience-rated contracts.

As prescribed in 1632.172, the following clause shall be inserted in all experience-rated FEHBP contracts:

PAYMENTS (JAN 2000)

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the Plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM and amounts for obligations due pursuant to paragraph (b) of this clause, plus any payments made by OPM from the Contingency Reserve.

(b) OPM will notify the Carrier of amounts due for outstanding obligations under the contract. Not later than 60 days after the date of written notice from OPM, the Carrier shall reimburse OPM. If payment is not received within the prescribed time frame, OPM shall withhold the amount due from the subscription charges owed the Carrier under paragraph (a) of this clause.

(c) The specific subscription rates, charges, allowances and limitations applicable to the contract are set forth in Appendix B.

(d) Recurring payments from premiums shall be made available for carrier drawdown not later than thirty days after receipt by the Fund. The Contracting Officer may authorize special non-recurring payments from the Contingency Reserve in accordance with OPM's regulations.

(e) In the event this contract between the Carrier and OPM is terminated or not renewed in accordance with General Provision 1.15, RENEWAL and WITHDRAWAL OF APPROVAL, the Contingency Reserve of the Carrier held by OPM shall be available to the Carrier to pay the necessary and proper charges against this contract to the extent that the Carrier reserves are insufficient for that purpose.

(f) *Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).* The Carrier will perform a final reconciliation of revenue and

costs for the demonstration project group at the end of the demonstration project. OPM will reimburse the Carrier's costs in excess of the premiums first from the Carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project.

(End of clause)

[53 FR 51784, Dec. 23, 1988, as amended at 57 FR 14361, Apr. 20, 1992; 62 FR 47578, Sept. 10, 1997; 63 FR 55339, Oct. 15, 1998; 64 FR 36274, July 6, 1999; 65 FR 36388, June 8, 2000]

1652.232–72 Non-commingling of FEHBP funds.

As prescribed in 1632.772, the following clause shall be inserted in all contracts based on cost analysis.

NON-COMMINGLING OF FUNDS (JAN 1991)

(a) The Carrier and/or its underwriter shall keep all FEHBP funds for this contract (cash and investments) physically separate from funds obtained from other sources. Accounting for such FEHBP funds shall not be based on allocations or other sharing mechanisms and shall agree with the Carrier's accounting records.

(b) In certain instances the physical separation of FEHBP funds may not be practical or desirable. In such cases, the Carrier may request a waiver from this requirement from the Contracting Officer. The waiver shall be requested in advance and the Carrier shall demonstrate that accounting techniques have been established that will clearly measure FEHBP cash and investment income (i.e., subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records shall be provided as supporting schedules to the Annual Accounting Statements.

(c) The Carrier shall incorporate this clause in all subcontracts that exceed $25,000 and shall substitute ''contractor'' or other appropriate reference for ''Carrier and/or its underwriter.''

(End of clause)

[52 FR 16044, May 1, 1987. Redesignated at 53 FR 51784, Dec. 23, 1988, and amended at 55 FR 27418, July 2, 1990]

1652.232–73 Approval for the Assignment of Claims.

As prescribed in 1632.806–70, the following clause shall be inserted in all FEHBP contracts:

APPROVAL FOR ASSIGNMENT OF CLAIMS (JAN 1991)

(a) Notwithstanding the provisions of section 5.35, (FAR 52.232–23) Assignment of Claims, the Carrier shall not make any assignment under the Assignment of Claims Act without the prior written approval of the Contracting Officer.

(b) Unless a different period is specified in the Contracting Officer's written approval, an assignment shall be in force only for a period f 1 year from the date of the Contracting Officer's approval. However, assignments may be renewed upon their expiration.

(End of clause)

[55 FR 27418, July 2, 1990]

1652.243–70 Changes—Negotiated benefits contracts.

As prescribed in section 1643.205–70, the following clause shall be inserted in all FEHBP contracts.

CHANGES—NEGOTIATED BENEFITS CONTRACTS (JAN 1998)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Carrier must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Carrier from proceeding with the contract as changed.

(End of clause)

[62 FR 47578, Sept. 10, 1997]

1652.244–70 Subcontracts.

As prescribed in section 1644.270, the following clause will be inserted in all FEHB Program contracts based on cost analysis (experience-rated):

SUBCONTRACTS (JUL 2005)

(a) The carrier will notify the Contracting officer in writing at least 30 days in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, if the amount of the subcontract or modification charged to the FEHB Program equals or exceeds $550,000 and is at least 25 percent of the total subcontract cost. The amount of the dollar charge to the FEHB Program shall be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act pursuant to 41 U.S.C. 254b(a)(7). Failure to provide advance notice may result in a Contracting officer's disallowance of subcontract costs or a penalty in the performance aspect of the carrier's service charge. In determining whether the amount chargeable to the FEHB Program contract for a given subcontract or modification equals or exceeds the $550,000 threshold, the following rules apply:

(1) For initial advance notification, the carrier shall add the total cost/price for the base year and all options, including quantity or service options and option periods.

(2) For contract modifications, options and/or renewals (e.g. evergreen contracts) not accounted for in paragraph (a)(1) of this clause, the carrier shall provide advance notification if they cause the total price to equal or exceed the threshold. OPM's review will be of the modification(s), itself, but documentation for the original subcontract will be required to perform the review. The $550,000 threshold will be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act. All subcontracts or subcontract modifications that equal or exceed the threshold are subject to audit under FAR 52.215–2 ''Audit and Records—Negotiations'' if based on cost analysis or 48 CFR 1646.301 and 1552.246–70 ''FEHB Inspection'' if based on price analysis.

(b) The advance notification required by paragraph (a) of this clause will include the information specified below:

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the carrier's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and a Certificate of Current Cost or Pricing Data must be submitted to the Contracting officer if required by law, regulation, or other contract provisions.

(6) [Reserved]

(7) A negotiation memorandum reflecting—

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant consideration controlling establishment of initial or revised prices;

(iii) An explanation of the reason cost or pricing data are not required, if the carrier believes that cost or pricing data are not required.

(iv) The extent, if any, to which the carrier did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent, if any, to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the carrier and the subcontractor; and the effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the carrier's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan, when incentives are used. The explanation will identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The carrier will obtain the Contracting officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) of this clause. However, the Contracting officer may ratify in writing any such subcontract for which written consent was not obtained. Ratification will constitute the consent of the Contracting officer.

(d) The Contracting officer may waive the requirement for advance notification and consent required by paragraphs (a), (b) and (c) of this clause where the carrier and subcontractor submit an application or renewal as a contractor team arrangement as defined in FAR subpart 9.6 and—

(1) The Contracting officer evaluated the arrangement during negotiation of the contract or contract renewal; and

(2) The subcontractor's price and/or costs were included in the Plan's rates that were reviewed and approved by the Contracting

officer during negotiation of the contract or contract renewal.

(e) If the carrier follows the notification and consent requirements of paragraphs (a), (b) and (c) of this clause and subsequently obtains the Contracting officer's consent or ratification, then the reasonableness of the subcontract's costs will be inferred as provided for in 1631.205–81. However, consent or ratification by the Contracting officer will not constitute a determination:

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) That the carrier should be relieved of any responsibility for performing this contract.

(f) No subcontract placed under this contract will provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts will not exceed the fee limitations in FAR 15.404–4(c)(4)(i). Any profit or fee payable under a subcontract will be in accordance with the provision of Section 3.7, *Service Charge*.

(g) The carrier will give the Contracting officer immediate written notice of any action or suit filed and prompt notice of any claim made against the carrier by any subcontractor or vendor that, in the opinion of the carrier, may result in litigation related in any way to this contract with respect to which the carrier may be entitled to reimbursement from the Government.

(End of clause)

[70 FR 31383, June 1, 2005, as amended at 71 FR 3016, Jan. 19, 2006]

1652.245–70 Government property (negotiated benefits contracts).

As prescribed in section 1645.303–70, the following clause shall be inserted in all FEHBP contracts.

GOVERNMENT PROPERTY (NEGOTIATED BENEFITS CONTRACTS) (JAN 1998)

(a) *Government-furnished property*. (1) The Government shall deliver to the Carrier, for use in connection with and under the terms of this contract, the Government-furnished property described in this contract together with any related data and information that the Carrier may request and is reasonably required for the intended use of the property (hereinafter referred to as ''Government-furnished property'').

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished ''as-is'') will be delivered to the Carrier at the times stated in this contract or, if not so stated, in sufficient time to enable the Carrier to meet the contract's performance dates.

(3) If Government-furnished property is received by the Carrier in a condition not suitable for the intended use, the Carrier shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Carrier, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(b) *Changes in Government-furnished property*. (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Carrier for the Government, under this contract. The Carrier shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Carrier's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in this contract to make the property available for performing this contract and there is any—

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) *Title in Government property*. (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Carrier, title to which vests in the Government under this paragraph (collectively referred to as ''Government property''), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(d) *Use of Government property*. The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) *Property administration*. (1) The Carrier shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) subpart 45.5, as in effect on the date of this contract.

(2) The Carrier shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Carrier shall make such repairs as the Government directs. However, if the Carrier cannot effect such repairs within the time required, the Carrier shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Carrier represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Carrier is responsible shall be accomplished by the Carrier at its own expense.

(f) *Access*. The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) *Risk of loss*. Unless otherwise provided in this contract, the Carrier assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Carrier. However, the Carrier is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(h) *Equitable adjustment*. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Carrier's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) *Final accounting and disposition of Government property*. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Carrier shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Carrier shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) *Abandonment and restoration of Carrier's premises*. Unless otherwise provided herein, the Government—

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Carrier's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) *Communications*. All communications under this clause shall be in writing.

(l) *Overseas contracts*. If this contract is to be performed outside of the United States of America, its territories, or possessions, the words ''Government'' and ''Government-furnished'' (wherever they appear in this clause) shall be construed as ''United States Government'' and ''United States Government-furnished'', respectively.

(End of clause)

[62 FR 47578, Sept. 10, 1997]

1652.246–70 FEHB Inspection.

As prescribed in 1646.301, the following clause will be inserted in all FEHB contracts:

FEHB INSPECTION (JUL 2005)

(a) The Contracting officer, or an authorized representative of the Contracting officer, has the right to inspect or evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unreasonably delay the work.

(b) The Contractor shall maintain and the Contracting officer, or an authorized representative of the Contracting officer, shall have the right to examine and audit all books and records relating to the contract for purposes of the Contracting officer's determination of the carrier's subcontractor or

Large Provider's compliance with the terms of the contract, including its payment (including rebate and other financial arrangements) and performance provisions. The Contractor shall make available at its office at all reasonable times those books and records for examination and audit for the record retention period specified in the Federal Employees Health Benefits Acquisition Regulation (FEHBAR), 48 CFR 1652.204–70. This subsection is applicable to subcontract and Large Provider Agreements with the exception of those that are subject to the ''Audits and Records—Negotiation'' clause, 48 CFR 52.215–2.

(c) If the Contracting officer, or an authorized representative of the Contracting officer, performs inspection, audit or evaluation on the premises of the carrier, the subcontractor, or the Large Provider, the carrier shall furnish or require the subcontractor or Large Provider to furnish all reasonable facilities for the same and convenient performance of these duties.

(d) The carrier shall insert this clause, including this subsection (d), in all subcontracts for underwriting and claim payments and administrative services and in all Large Provider Agreements and shall substitute ''contractor'' ''Large Provider,'' or other appropriate reference for the term ''carrier.''

(End of clause)

[70 FR 31384, June 1, 2005, as amended at 71 FR 3016, Jan. 19, 2006]

1652.249–70 Renewal and withdrawal of approval.

As prescribed in 1649.101–70, the following clause shall be inserted in all FEHBP contracts:

RENEWAL AND WITHDRAWAL OF APPROVAL (JAN 1991)

(a) Pursuant to 5 U.S.C. 8902(a), the contract renews automatically for a term of 1 year each January 1st, unless written notice of intent not to renew is given either by OPM or the Carrier not less than 60 calendar days before the renewal date, or unless modified by mutual agreement.

(b) This contract also may be terminated at other times by order of OPM pursuant to 5 U.S.C. 8902(e). After OPM notifies the Carrier of its intent to terminate the contract, OPM may take action as it deems necessary to protect the interests of members, including but not limited to—

(1) Suspending new enrollments under the contract;

(2) Advising enrollees of the asserted deficiencies; and

(3) Providing enrollees an opportunity to transfer to another Plan.

(c) OPM may, after proper notice, terminate the contract at the end of the contract term if it finds that the Carrier did not have at least 300 enrollees enrolled in its plan at any time during the two preceding contract terms.

(End of clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27418, July 2, 1990; 57 FR 19388, May 6, 1992]

1652.249–71 FEHBP termination for convenience of the government—negotiated benefits contracts.

As prescribed in section 1649.101–71, the following clause shall be inserted in all FEHBP contracts.

FEHBP TERMINATION FOR CONVENIENCE OF THE GOVERNMENT—NEGOTIATED BENEFITS CONTRACTS (JAN 1998)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Carrier a Notice of Termination specifying the extent of terminating and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Carrier shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Carrier under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, deliver to the Government any data, reports, or studies that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(c) After termination, the Carrier shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Carrier shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Carrier within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Carrier fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Carrier because of the termination and shall pay the amount determined.

(d) Subject to paragraph (c) of this clause, the Carrier and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (d) or paragraph (e) of this clause, exclusive of costs shown in subparagraph (e)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Carrier paid the agreed amount. Paragraph (e) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(e) If the Carrier and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Carrier the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (d) above:

(1) The contract price for completed services accepted by the Government not previously paid for.

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to services paid or to be paid under paragraph (e)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (e)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (e)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(f) The cost principles and procedures of part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(g) The Carrier shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (c), (e), or (i) of this clause, except that if the Carrier failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (c) or (i), respectively, and failed to request a time extension, there is no right of appeal.

(h) In arriving at the amount due the Carrier under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Carrier under the terminated portion of this contract;

(2) Any claim which the Government has against the Carrier under this contract; and

(i) If the termination is partial, the Carrier may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Carrier for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(j)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Carrier for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Carrier will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Carrier shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Carrier to the date the excess is repaid.

(k) Unless otherwise provided in this contract or by statute, the Carrier shall maintain all records and documents relating to the terminated portion of this contract for 3

years after final settlement. This includes all books and other evidence bearing on the Carrier's costs and expenses under this contract. The Carrier shall make these records and documents available to the Government, at the Carrier's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

[62 FR 47579, Sept. 10, 1997]

1652.249–72 FEHBP termination for default—negotiated benefits contracts.

As prescribed in §1649.101–72, the following clause shall be inserted in all FEHBP contracts.

FEHBP TERMINATION FOR DEFAULT—NEGOTIATED BENEFITS CONTRACTS (JAN 1998)

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Carrier, terminate this contract in whole or in part if the Carrier fails to—

(i) Perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Carrier does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or service similar to those terminated, and the Carrier will be liable to the Government for any excess costs for those supplies or services. However, the Carrier shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Carrier shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Carrier. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Carrier.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Carrier and subcontractor, and without the fault or negligence of either, the Carrier shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Carrier to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Carrier to transfer title and deliver to the Government, as directed by the Contracting Officer, any completed or partially completed information and contract rights that the Carrier has specifically produced or acquired for the terminated portion of this contract.

(f) If, after termination, it is determined that the Carrier was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(g) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

[62 FR 47580, Sept. 10, 1997]

Subpart 1652.3—FEHBP Clause Matrix

1652.370 Use of the matrix.

(a) The matrix in this section lists the FAR and FEHBAR clauses to be used with contracts based on cost analysis and contracts based on a combination of cost and price analysis. Carriers shall submit initial applications and requests for renewals on the basis that the new contract or contract renewal will include the clauses indicated.

(b) Certain contract clauses are mandatory for FEHBP contracts. Other clauses are to be used only when made applicable by pertinent sections of the FAR or FEHBAR. An ''M'' in the ''Use Status'' column indicates that the clause is mandatory. An ''A'' indicates that the clause is to be used only when the applicable conditions are met.

(c) Clauses are incorporated in the contract either in full text or by reference. If the full text is to be used, the

matrix indicates a "T". If the clause is incorporated by reference, the matrix indicates an "R".

FEHB CLAUSE MATRIX

Clause No.	Text Reference	Title	Use Status	Use With Experience Rated Contracts	Use With Community Rated Contracts
FAR 52.202-1	FAR 2.201	Definitions	M	T	T
FAR 52.203-3	FAR 3.202	Gratuities	M	T	T
FAR 52.203-5	FAR 3.404	Covenant Against Contingent Fees	M	T	T
FAR 52.203-7	FAR 3.502-3	Anti-Kickback Procedures	M	T	T
FAR 52.203-12	FAR 3.808(b)	Limitation on Payments to Influence Certain Federal Transactions	M	T	T
1652.203-70	1603-7003	Misleading, Deceptive, or Unfair Advertising	M	T	T
1652.204-70	1604.705	Contractor Records Retention	M	T	T
1652.204-71	1604.7001	Coordination of Benefits	M	T	T
1652.204-72	1604.7101	Filing Health Benefit Claims/Court Review of Disputed Claims	M	T	T
1652.204-73	1604.970	Taxpayer Identification Number	M	T	T
1652.204-74	1604.7202	Large Provider Agreements	M	T	
FAR 52.209-6	FAR 9.409(b)	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	M	T	T
FAR 52.215-2	FAR 15.209(b)	Audit & Records—Negotiation	A	T	T
FAR 52.215-10	FAR 15.408(b)	Price Reduction for Defective Cost or Pricing Data	M	T	
FAR 52.215-12	FAR 15.408(d)	Subcontractor Cost or Pricing Data	M	T	
FAR 52.215-15	FAR 15.408(g)	Pension Adjustments and Asset Reversions	M	T	
FAR 52.215-16	FAR 15.408(h)	Facilities Capital Cost of Money	M	T	
FAR 52.215-17	FAR 15.408(i)	Waiver of Facilities Capital Cost of Money	A	T	
FAR 52.215-18	FAR 15.408(j)	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions	M	T	

Clause No.	Text Reference	Title	Use Status	Use With Experience Rated Contracts	Use With Community Rated Contracts
1652.215-70	1615.407-70	Rate Reduction for Defective Pricing or Defective Cost or Pricing Data	M		T
1652.215-71	1615.407-72	Investment Income	M	T	
1652.216-70	1616.7001	Accounting and Price Adjustment	M		T
1652.216-71	1616.7002	Accounting and Allowable Cost	M	T	
FAR 52.219-8	FAR 19.708(a)	Utilization of Small Business Concerns	M	T	T
FAR 52.222-1	FAR 22.103-5(a)	Notice to the Government of Labor Disputes	M	T	T
FAR 52.222-3	FAR 22.202	Convict Labor	M	T	T
FAR 52.222-4	FAR 22.305	Contract Work Hours and Safety Standards Act–Overtime Compensation	M	T	T
FAR 52.222-21	FAR 22.810(a)(1)	Prohibition of Segregated Facilities	M	T	T
FAR 52.222-26	FAR 22.810(a)	Equal Opportunity	M	T	T
FAR 52.222-29	FAR 22.810(g)	Notification of Visa Denial	A	T	T
FAR 52.222-35	FAR 22.1308(a)	Equal Opportunity for Special Disabled Veterans, and Other Eligible Veterans	M	T	T
FAR 52.222-36	FAR 22.1408(a)	Affirmative Action for Workers With Disabilities	M	T	T
FAR 52.222-37	FAR 22.1308(b)	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	M	T	T
1652.222-70	1622.103-70	Notice of Significant Events	M	T	T
FAR 52.223-6	FAR 23.505	Drug-Free Workplace	A	T	T
1652.224-70	1624.104	Confidentiality of Records	M	T	T
FAR 52.227-1	FAR 27.201-2(a)	Authorization and Consent	M	T	T
FAR 52.227-2	FAR 27.202-2	Notice and Assistance Regarding Patent and Copyright Infringement	M	T	T
FAR 52.229-3	FAR 29.401-3	Federal, State and Local Taxes	M		T

Clause No.	Text Reference	Title	Use Status	Use With Experience Rated Contracts	Use With Community Rated Contracts
FAR 52.229-4	FAR 29.401-4	Federal, State and Local Taxes (Noncompetitive Contract)	M	T	
FAR 52.229-5	FAR 29.401-5	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico	A	T	T
1652.229-70	FEHBAR 1629.402	Taxes—Foreign Negotiated Benefits Contracts	A	T	T
FAR 52.232-8	FAR 32.111(c)(1)	Discounts for Prompt Payment	M	T	T
FAR 52.232-17	FAR 32.617(a) Modification: 1632.617	Interest	M	T	T
FAR 52.232-23	FAR 32.806(a)(1)	Assignment of Claims	A	T	T
FAR 52.232-33	FAR 32.1103(a)	Payment by Electronic Funds Transfer—Central Contractor Registration	M	T	T
1652.232-70	1632.171	Payments—Community-Rated Contracts	A		T
1652.232-71	1632.172	Payments—Experience-Rated Contracts	A	T	
1652.232-72	1632.772	Non-Commingling of FEHBP Funds	M	T	
1652.232-73	1632.806-70	Approval for Assignment of Claims	M	T	T
FAR 52.233-1	FAR 33.215	Disputes	M	T	T
FAR 52.242-1	FAR 42.802	Notice of Intent to Disallow Costs	M	T	
FAR 52.242-3	FAR 42.709-6	Penalties for Unallowable Costs	M	T	
FAR 52.242-13	FAR 42.903	Bankruptcy	M	T	T
1652.243-70	1643.205-70	Changes–Negotiated Benefits Contracts	M	T	T
FAR 52.244-5	FAR 44.204(c)	Competition in Subcontracting	M	T	
FAR 52.244-6	FAR 44.403	Subcontracts for Commercial Items	M	T	
1652.244-70	1644.270	Subcontracts	M	T	
1652.245-70	1645.303-70	Government Property (Negotiated Benefits Contracts)	M	T	T

Clause No	Text Reference	Title	Use Status	Use With Experience Rated Contracts	Use With Community Rated Contracts
FAR 52.246-25	FAR 46.805(a)(4)	Limitation of Liability—Services	M	T	
1652.246-70	1646.301	FEHB Inspection	M	T	T
FAR 52.247-63	FAR 47.405	Preference for U.S.-Flag Air Carriers	M	T	T
1652.249-70	1649.101-70	Renewal and Withdrawal of Approval	M	T	T
1652.249-71	1649.101-71	FEHBP Termination for Convenience of the Government–Negotiated Benefits Contracts	M	T	T
1652.249-72	1649.101-72	FEHBP Termination for Default–Negotiated Benefits Contracts	M	T	T
FAR 52.251-1	FAR 51.107	Government Supply Sources	A	T	
FAR 52.252-4	FAR 52.107(d)	Alterations in Contract	A	T	T
FAR 52.252-6	FAR 52.107(f)	Authorized Deviations in Clauses	M	T	T

[52 FR 16044, May 1, 1987, as amended at 55 FR 27418, July 2, 1990; 59 FR 14767, Mar. 30, 1994; 62 FR 47580, Sept. 10, 1997; 62 FR 50435, Sept. 25, 1997; 63 FR 55339, Oct. 15, 1998; 65 FR 63388, June 8, 2000; 70 FR 31385, June 1, 2005]

PART 1653—FORMS

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1653.000 FEHBP forms.

The following forms specified in FAR subparts 53.2 and 53.3 are applicable to FEHBP acquisitions:

Part 53.2	Part 53.3	Form title
53.201–1	53.301–1402	SF 1402–Certificate of Appointment.
53.203	53.301–119	SF 119—Statement of Contingent or Other Fees.
53.204–2(a)	53.301–279	SF 279 FPDS—Individual Contract Action Report (over $10,000).
53.204–2(b)	53.301–281	SF 281 FPDS—Summary of Contract Actions of $10,000 or less.
53.229	53.301–1094	SF 1094—U.S. Tax Exemption Certificate.
53.229	53.301–1094A	SF 1094A—Tax Exemption Certificates Accountability Record.

[52 FR 16048, May 1, 1987, as amended at 62 FR 47583. Sept. 10, 1997]

PART 1699—COST ACCOUNTING STANDARDS

Subpart 1699.7—Cost Accounting Standards

1699.70 Cost accounting standards.

With respect to all experience-rated contracts currently existing under the FEHB Program, the Cost Accounting Standards, found at 48 CFR part 9904, of the Code of Federal Regulations, do not apply.

[70 FR 31392, June 1, 2005]

CHAPTER 17—OFFICE OF PERSONNEL MANAGEMENT

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PARTS 1700–1732 [RESERVED]

PART 1733—PROTESTS, DISPUTES, AND APPEALS

Subpart 1733.2—Disputes and Appeals

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1733.212 Contracting officer's duties upon appeal.
1733.214 Contract clause.

AUTHORITY: 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 51 FR 44296, Dec. 9, 1986, unless otherwise noted.

Subpart 1733.2—Disputes and Appeals

1733.203 Applicability.

(a) The Office of Personnel Management's (OPM) procurement executive shall make the determination prescribed under FAR 33.203(b).

(b) Requests for determinations under paragraph (a) of this section shall be submitted by OPM's contracting officer through OPM's head of the contracting activity to the procurement executive for further action.

1733.203–70 Designation of the Interior Board of Contract Appeals to decide OPM appeals.

(a) The Interior Board of Contract Appeals (IBCA) has been designated by the Director of OPM to consider and determine appeals from decisions of a contracting officer arising under a contract or relating to a contract made by OPM. This delegation governs disputes between OPM and its prime contractors and does not encompass any claim made by a third party beneficiary of, or by a subscriber to, a Federal employee insurance program.

(b) The address of IBCA is 801 North Quincy Street, Arlington, VA 22203.

(c) IBCA rules of procedure can be found in 43 CFR part 4.

[51 FR 44296, Dec. 9, 1986, as amended at 68 FR 62022, Oct. 31, 2003]

1733.209 Suspected fraudulent claims.

If the contractor is unable to support any part of the claim and there is evidence that the inability is attributable to misrepresentation of fact or to fraud on the part of the contractor, the contracting officer shall refer the matter through the head of the contracting activity to OPM's Offices of the Inspector General and the General Counsel.

1733.211 Contracting officer's decision.

The written decision required by FAR 33.211(a)(4) shall include, in the paragraph listed under FAR 33.211(a)(4)(v), specific reference to the Interior Board of Contract Appeals, 801 North Quincy Street, Arlington, VA 22203, and its procedures under 43 CFR part 4. The IBCA optional small claims (expedited) procedures and accelerated procedures under 43 CFR 4.113 shall also be referenced as required by the FAR.

[51 FR 44296, Dec. 9, 1986, as amended at 51 FR 44296, Dec. 9, 1986]

1733.212 Contracting officer's duties upon appeal.

(a) When a notice of appeal has been received, the contracting officer shall endorse on the appeal the date of mailing (or the date of receipt if the notice was not mailed) and forward it to IBCA by certified mail within 5 days of receipt. OPM's Office of the General Counsel and the Department of the Interior's (DOI) Office of the Solicitor shall also be notified of the appeal by the contracting officer. 43 CFR 4.103.

(b) The contracting officer shall prepare and transmit the documentation and information required by 43 CFR 4.104 in the form of an appeal file to IBCA, OPM's Office of the General Counsel, DOI's Office of the Solicitor, and appellant or appellant's counsel within 30 days after receipt of a notice of appeal or advice that an appeal has been docketed by IBCA.

1733.214 Contract clause.

The Disputes clause contained in FAR 52.233–1 shall be used with its Alternate I in all OPM solicitations and contracts.

PARTS 1734–1799 [RESERVED]

CHAPTER 18—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

EDITORIAL NOTE: Nomenclature changes to chapter 18 appear at 58 FR 51136, Sept. 30, 1993, and 67 FR 30602, May 7, 2002.

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SUBCHAPTER A—GENERAL

PART 1800 [RESERVED]

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

Sec.
1801.000 Scope of part.

Subpart 1801.1—Purpose, Authority, Issuance

1801.103 Authority.
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1801.105–1 Publication and code arrangement.
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AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 40534, Aug. 5, 1996, unless otherwise noted.

1801.000 Scope of part.

This part sets forth general information about the National Aeronautics and Space Administration (NASA) Federal Acquisition Regulations (FAR) Supplement, also referred to as the NFS.

Subpart 1801.1—Purpose, Authority, Issuance

1801.103 Authority. (NASA supplements paragraph (a))

(a) Under the following authorities, the Administrator has delegated to the Assistant Administrator for Procurement authority to prepare, issue, and maintain the NFS:

(i) The National Aeronautics and Space Act of 1958 (Public Law 85–568; 42 U.S.C. 2451 *et seq.*).

(ii) 10 U.S.C. chapter 137.

(iii) Other statutory authority.

(iv) FAR subpart 1.3.

1801.104 Applicability.

The NFS applies to all acquisitions as defined in FAR part 2 except those expressly excluded by the FAR or this chapter.

1801.105 Issuance.

1801.105–1 Publication and code arrangement.

(b)(i) The NFS is an integrated document that contains both acquisition regulations that require public comment and internal Agency guidance and procedures that do not require public comment. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

(ii) NFS regulations that require public comment are issued as chapter 18 of title 48, CFR.

(iii) The single official NASA-maintained version of the NFS is on the Internet (*http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm*).

[69 FR 21762, Apr. 22, 2004]

1801.105–2 Arrangement of regulations. (NASA supplements paragraph (b))

(b)(1)(A) Numbering of NFS text implementing the FAR shall be the same as that of the related FAR text, except when the NFS coverage exceeds one paragraph. In such case the NFS text is numbered by skipping a unit in the FAR 1.105–2(b)(2) prescribed numbering sequence. For example, two paragraphs implementing FAR 1.105–2(b)(1) are numbered 1801.105–2(b)(1) (A) and (B), rather than (1) (i) and (ii). Further subdivision of the NFS implementing paragraphs would follow the prescribed sequence in FAR 1.105(b)(2).

(B) NFS text that supplements the FAR is numbered the same as its FAR counterpart with the addition of a number 70 and up. For example, NFS supplement of FAR subsection 1.105–3 is numbered 1801.105–370. Supplemental text exceeding one paragraph is numbered using the FAR 1.105–2(b)(2) prescribed numbering sequence without skipping a unit.

(2) Subdivision numbering below the fourth level repeats the numbering sequence using italicized letters and numbers.

1801.106 OMB approval under the Paperwork Reduction Act. (NASA paragraphs (1) and (2))

(1) NFS requirements. The following OMB control numbers apply:

NFS Segment	OMB Control No.
1804.470	2700–0098
1804.74	2700–0097
1819	2700–0073
1819.72	2700–0078
1823.271	2700–0106
1827	2700–0052
1831	2700–0080
1843	2700–0054
1843.71	2700–0094
NF 533	2700–0003
NF 1018	2700–0017

(2) *Solicitations and contracts.* Various requirements in a solicitation or contract, generally in the statement of work, are not tied to specific paragraphs cleared in paragraph (1) of this section, yet require information collection or recordkeeping. The following OMB control numbers apply to these requirements: 2700–0086 (acquisitions up to $25,000), 2700–0087 (solicitations that may result in bids or proposals not exceeding $500,000), 2700–0085 (solicitations that may result in bids or proposals exceeding $500,000), 2700–0088 (contracts not exceeding $500,000), and 2700–0089 (contracts exceeding $500,000).

[61 FR 40534, Aug. 5, 1996, as amended at 63 FR 9953, Feb. 27, 1998; 65 FR 46627, July 31, 2000; 68 FR 43333, July 22, 2003]

PART 1802—DEFINITIONS OF WORDS AND TERMS

Sec.
1802.000 Scope of part.

Subpart 1802.1—Definitions

1802.101 Definitions.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 61 FR 40537, Aug. 5, 1996, unless otherwise noted.

1802.000 Scope of part.

Commonly used words and terms are defined in FAR subpart 2.1. This part 1802 gives NASA-specific meanings for some of these words and terms and defines other words and terms commonly used in the NASA acquisition process.

Subpart 1802.1—Definitions

1802.101 Definitions.

Administrator means the Administrator or Deputy Administrator of NASA.

Contracting activity in NASA includes the NASA Headquarters installation, the NASA Shared Services Center, and the following field installations: Ames Research Center, Dryden Flight Research Center, Glenn Research Center at Lewis Field, Goddard Space Flight Center, Johnson Space Center, Kennedy Space Center, Langley Research Center, Marshall Space Flight Center and Stennis Space Center. A major program that may have contracts at multiple field centers may also be considered a ''contracting activity.''

Head of the agency or *agency head* means the Administrator or Deputy Administrator of NASA.

Head of the contracting activity (HCA) means, for field installations, the Director or other head, and for NASA Headquarters, the Director for Headquarters Operations. For Space Operations Mission Directorate (SOMD) contracts, the HCA is the Associate Administrator for SOMD in lieu of the field Center Director(s). For Exploration Systems Mission Directorate (ESMD) contracts, the HCA is the Associate Administrator for ESMD in lieu of the field Center Director(s). For NASA Shared Services Center (NSSC) contracts, the HCA is the Executive Director of the NSSC in lieu of the field Center Director(s).

NASA Acquisition Internet Service (NAIS) means the Internet service (URL: hhtp://procurement.nasa.gov) NASA uses to broadcast its business opportunities, procurement regulations, and associated information.

Procurement officer means the chief of the contracting office, as defined in FAR 2.101.

Senior Procurement Executive means the Associate Administrator or Deputy Assistant Administrator for Procurement, Office of Procurement, NASA Headquarters (Code H).

[61 FR 40537, Aug. 5, 1996, as amended at 63 FR 9953, Feb. 27, 1998; 64 FR 19926, Apr. 23, 1999; 68 FR 23423, May 2, 2003; 70 FR 52941, Sept. 6, 2005; 71 FR 7873, Feb. 15, 2006; 71 FR 71073, Dec. 8, 2006]

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1803.1—Safeguards

Sec.
1803.104 Procurement integrity.
1803.104–1 Definitions.

Subpart 1803.9—Contractor Employee Whistleblower Protections

1803.900 Scope of subpart.
1803.901 Definition.
1803.903 Policy.
1803.904 Procedures for filing complaints.
1803.905 Procedures for investigating complaints.
1803.906 Remedies.
1803.907 Classified information.
1803.970 Contract clause.

Subpart 1803.70—IG Hotline Posters

1803.7000 Policy.
1803.7001 Contract clause.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

SOURCE: 61 FR 40537, Aug. 5, 1996, unless otherwise noted.

Subpart 1803.1—Safeguards

1803.104 Procurement integrity.

1803.104–1 Definitions.

Agency ethics official means for Headquarters, the General Counsel and the Associate General Counsel for General Law, and for each center, the Chief Counsel.

[62 FR 36704, July 9, 1997. Redesignated at 67 FR 30603, May 7, 2002]

Subpart 1803.9—Contractor Employee Whistleblower Protections

SOURCE: 79 FR 43959, July 29, 2014, unless otherwise noted.

1803.900 Scope of subpart.

This subpart applies to NASA instead of FAR subpart 3.9.

(a) This subpart implements 10 U.S.C. 2409 as amended by section 846 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), section 842 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), and section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239).

(b) This subpart does not apply to any element of the intelligence community, as defined in 50 U.S.C. 3003(4). This subpart does not apply to any disclosure made by an employee of a contractor or subcontractor of an element of the intelligence community if such disclosure—

(1) Relates to an activity or an element of the intelligence community; or

(2) Was discovered during contract or subcontract services provided to an element of the intelligence community.

1803.901 Definition.

Abuse of authority, as used in this subpart, means an arbitrary and capricious exercise of authority that is inconsistent with the mission of NASA or the successful performance of a NASA contract.

1803.903 Policy.

(a) *Policy*. 10 U.S.C. 2409 prohibits contractors or subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities listed at paragraph (b) of this section, information that the employee reasonably believes is evidence of gross mismanagement of a NASA contract, a gross waste of NASA funds, an abuse of authority relating to a NASA contract, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a NASA contract (including the competition for or negotiation of a contract). Such reprisal is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(b) Entities to whom disclosure may be made:

(1) A Member of Congress or a representative of a committee of Congress.

(2) The NASA Inspector General or any other Inspector General that has oversight over contracts awarded by or on behalf of NASA.

(3) The Government Accountability Office.

(4) A NASA employee responsible for contract oversight or management.

(5) An authorized official of the Department of Justice or other law enforcement agency.

(6) A court or grand jury.

(7) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

(c) *Disclosure clarified.* An employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a NASA contract shall be deemed to have made a disclosure.

(d) *Contracting officer actions.* A contracting officer who receives a complaint of reprisal of the type described in paragraph (a) of this section shall forward it to legal counsel and to the NASA Inspector General.

1803.904 Procedures for filing complaints.

(a) Any employee of a contractor or subcontractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 1803.903 may file a complaint with the Inspector General of NASA.

(b) A complaint may not be brought under this section more than three years after the date on which the alleged reprisal took place.

(c) The complaint shall be signed and shall contain—

(1) The name of the contractor;

(2) The contract number, if known; if not known, a description reasonably sufficient to identify the contract(s) involved;

(3) The violation of law, rule, or regulation giving rise to the disclosure;

(4) The nature of the disclosure giving rise to the discriminatory act, including the party to whom the information was disclosed; and

(5) The specific nature and date of the reprisal.

1803.905 Procedures for investigating complaints.

(a) Unless the NASA Inspector General makes a determination that the complaint is frivolous, fails to allege a violation of the prohibition in 1803.903, or has been previously addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the NASA Inspector General will investigate the complaint.

(b) If the NASA Inspector General determines that a complaint merits further investigation, the NASA Inspector General will—

(1) Notify the complainant, the contractor alleged to have committed the violation, and the head of the Agency;

(2) Conduct an investigation; and

(3) Provide a written report of findings to the complainant, the contractor alleged to have committed the violation, and the head of the Agency.

(c) The NASA Inspector General—

(1) Will determine that the complaint is frivolous or will submit the report addressed in paragraph (b) of this section within 180 days after receiving the complaint; and

(2) If unable to submit a report within 180 days, will submit the report within the additional time period, up to 180 days, to which the person submitting the complaint agrees.

(d) The NASA Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is—

(1) Made with the consent of the person alleging reprisal;

(2) Made in accordance with 5 U.S.C. 552a (the Freedom of Information Act) or as required by any other applicable Federal law; or

(3) Necessary to conduct an investigation of the alleged reprisal.

(e) The legal burden of proof specified at paragraph (e) of 5 U.S.C. 1221 (Individual Right of Action in Certain Reprisal Cases) shall be controlling for the purposes of an investigation conducted by the NASA Inspector General, decision by the head of the Agency, or judicial or administrative proceeding to determine whether prohibited discrimination has occurred.

1803.906 Remedies.

(a) Not later than 30 days after receiving a NASA Inspector General report in accordance with 1803.905, the head of the Agency shall determine whether sufficient basis exists to conclude that the contractor has subjected the complainant to a reprisal as prohibited by 1803.903 and shall either issue an order denying relief or shall take one or more of the following actions:

(1) Order the contractor to take affirmative action to abate the reprisal.

(2) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(3) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the Agency.

(b) If the head of the Agency issues an order denying relief or has not issued an order within 210 days after the submission of the complaint or within 30 days after the expiration of an extension of time granted in accordance with 1803.905(3)(ii), and there is no showing that such delay is due to the bad faith of the complainant—

(1) The complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint; and

(2) The complainant may bring a de novo action at law or equity against the contractor to seek compensatory damages and other relief available under 10 U.S.C. 2409 in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury. An action under this authority may not be brought more than two years after the date on which remedies are deemed to have been exhausted.

(c) Whenever a contractor fails to comply with an order issued by the head of agency in accordance with 10 U.S.C. 2409, the head of the Agency or designee shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and reasonable attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.

(d) Any person adversely affected or aggrieved by an order issued by the head of the Agency in accordance with 10 U.S.C. 2409 may obtain judicial review of the order's conformance with the law, and the implementing regulation, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency or designee. Review shall conform to chapter 7 of title 5, Unites States Code. Filing such an appeal shall not act to stay the enforcement of the order by the head of an agency, unless a stay is specifically entered by the court.

(e) The rights and remedies provided for in this subpart may not be waived by any agreement, policy, form, or condition of employment.

1803.907 Classified information.

Nothing in this subpart provides any rights to disclose classified information not otherwise provided by law.

1803.970 Contract clause.

Use the clause at 1852.203–71, Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts.

Subpart 1803.70—IG Hotline Posters

1803.7000 Policy.

NASA requires contractors to display NASA hotline posters prepared by the NASA Office of Inspector General on those contracts specified in 1803.7001, so that employees of the contractor having knowledge of waste, fraud, or abuse, can readily identify a means to contact NASA's IG.

[66 FR 29727, June 1, 2001]

1803.7001 Contract clause.

Contracting officers must insert the clause at 1852.203–70, Display of Inspector General Hotline Posters, in solicitations and contracts expected to exceed $5,000,000 and performed at contractor facilities in the United States.

[66 FR 29727, June 1, 2001]

PART 1804—ADMINISTRATIVE MATTERS

Subpart 1804.1—Contract Executive

Sec.
1804.170 Contract effective date.

Subpart 1804.4—Safeguarding Classified Information Within Industry

1804.404–70 Contract clause.
1804.470 Security requirements for unclassified information technology (IT) resources.
1804.470–1 Scope.
1804.470–2 Policy.
1804.470–3 IT security requirements.
1804.470–4 Contract clauses.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 40539, Aug. 5, 1996, unless otherwise noted.

Subpart 1804.1—Contract Execution

1804.170 Contract effective date.

(a) *Contract effective date* means the date agreed upon by the parties for beginning the period of performance under the contract. In no case shall the effective date precede the date on which the contracting officer or designated higher approval authority signs the document.

(b) Costs incurred before the contract effective date are unallowable unless they qualify as precontract costs (see FAR 31.205–32) and the clause prescribed at 1831.205–70 is used.

Subpart 1804.4—Safeguarding Classified Information Within Industry

1804.404–70 Contract clause.

The contracting officer shall insert the clause at 1852.204–75, Security Classification Requirements, in solicitations and contracts if work is to be performed will require security clearances. This clause may be modified to add instructions for obtaining security clearances and access to security areas that are applicable to the particular acquisition and installation.

1804.470 Security requirements for unclassified information technology (IT) resources.

1804.470–1 Scope.

This section implements NASA's acquisition requirements pertaining to Federal policies for the security of unclassified information and information systems. Federal policies include the Federal Information System Management Act (FISMA) of 2002, Homeland Security Presidential Directive (HSPD) 12, Clinger-Cohen Act of 1996 (40 U.S.C. 1401 *et seq.*), OMB Circular A–130, Management of Federal Information Resources, and the National Institute of Standards and Technology (NIST) security requirements and standards. These requirements safeguard IT services provided to NASA such as the management, operation, maintenance, development, and administration of hardware, software, firmware, computer systems, networks, and telecommunications systems.

[72 FR 26561, May 10, 2007]

1804.470–2 Policy.

NASA IT security policies and procedures for unclassified information and IT are prescribed in NASA Policy Directive (NPD) 2810, Security of Information Technology; NASA Procedural Requirements (NPR) 2810, Security of Information Technology; and interim

policy updates in the form of NASA Information Technology Requirements (NITR). IT services must be performed in accordance with these policies and procedures.

[72 FR 26561, May 10, 2007]

1804.470–3 IT security requirements.

(a) These IT security requirements cover all NASA awards in which IT plays a role in the provisioning of services or products (*e.g.*, research and development, engineering, manufacturing, IT outsourcing, human resources, and finance) that support NASA in meeting its institutional and mission objectives. These requirements are applicable when a contractor or subcontractor must obtain physical or electronic access beyond that granted the general public to NASA's computer systems, networks, or IT infrastructure. These requirements are applicable when NASA information is generated, stored, processed, or exchanged with NASA or on behalf of NASA by a contractor or subcontractor, regardless of whether the information resides on a NASA or a contractor/subcontractor's information system.

(b) The Applicable Documents List (ADL) should consist of all NASA Agency-level IT Security and Center IT Security Policies applicable to the contract. Documents listed in the ADL as well as applicable Federal IT Security Policies are available at the NASA IT Security Policy Web site at: *http://www.nasa.gov/offices/ocio/itsecurity/index.html*.

[76 FR 4080, Jan. 24, 2011]

1804.470–4 Contract clause.

(a) Insert the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources, in *all* solicitations and awards when contract performance requires contractors to—

(1) Have physical or electronic access to NASA's computer systems, networks, or IT infrastructure; or

(2) Use information systems to generate, store, process, or exchange data with NASA or on behalf of NASA, regardless of whether the data resides on a NASA or a contractor's information system.

(b) Parts of the clause and referenced ADL may be waived by the contracting officer if the contractor's ongoing IT security program meets or exceeds the requirements of NASA Procedural Requirements (NPR) 2810.1 in effect at time of award. The current version of NPR 2810.1 is referenced in the ADL. The contractor shall submit a written waiver request to the Contracting Officer within 30 days of award. The waiver request will be reviewed by the Center IT Security Manager. If approved, the Contractor Officer will notify the contractor, by contract modification, which parts of the clause or provisions of the ADL are waived.

[76 FR 4080, Jan. 24, 2011]

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 1805—PUBLICIZING CONTRACT ACTIONS

Subpart 1805.3—Synopses of Contract Awards

Sec.
1805.303 Announcement of contract awards.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 40543, Aug. 5, 1996, unless otherwise noted.

Subpart 1805.3—Synopses of Contract Awards

1805.303 Announcement of contract awards. (NASA supplements paragraph (a))

(a)(i) In lieu of the $3.5 million threshold cited in FAR 5.303(a), NASA Headquarters public announcement is required for award of contract actions that have a total anticipated value, excluding unexercised options, of $5 million or greater. This threshold applies to new awards, contract modifications, and option exercises, but not to incremental funding or cost overrun modifications.

[61 FR 40543, Aug. 5, 1996, as amended at 69 FR 21762, Apr. 22, 2004; 70 FR 56857, Sept. 29, 2005; 71 FR 71073, Dec. 8, 2006]

PART 1806—COMPETITION REQUIREMENTS

Subpart 1806.2—Full and Open Competition After Exclusion of Sources

Sec.
1806.202 Establishing or maintaining alternative sources.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 40545, Aug. 5, 1996, unless otherwise noted.

Subpart 1806.2—Full and Open Competition After Exclusion of Sources

1806.202 Establishing or maintaining alternative sources. (NASA supplements paragraphs (a) and (b))

(a) The authority of FAR 6.202 is to be used to totally or partially exclude a particular source.

[61 FR 40545, Aug. 5, 1996, as amended at 69 FR 21762, Apr. 22, 2004]

PART 1807—ACQUISITION PLANNING

Subpart 1807.1—Acquisition Plans

Sec.
1807.107 Additional requirements for acquisitions involving bundling.
1807.107–170 Orders against Federal Supply Schedule contracts or other indefinite-delivery contracts awarded by another agency.

Subpart 1807.72—Acquisition Forecasting

1807.7200 Policy.
1807.7201 Definitions.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 47068, Sept. 6, 1996, unless otherwise noted.

Subpart 1807.1—Acquisition Plans

1807.107 Additional requirements for acquisitions involving bundling.

(c) Requests for approval of proposed bundlings that do not meet the thresholds in FAR 7.107(b) must be sent to the Headquarters Office of Procurement (Code HS).

(e) The substantial bundling documentation requirement applies to each proposed NASA bundling expected to exceed $5 million or more. The contracting officer must forward the documentation along with the measurable benefits analysis required by FAR 7.107(b) to the Headquarters Office of Procurement (Code HS) in sufficient

time to allow a minimum of 10 days for review.

[65 FR 46876, Aug. 1, 2000]

1807.107–70 Orders against Federal Supply Schedule contracts or other indefinite-delivery contracts awarded by another agency.

The FAR and NFS requirements for justification, review, and approval of bundling of contract requirements also apply to an order from a Federal Supply Schedule contract or other indefinite-delivery contract awarded by another agency if the requirements consolidated under the order meet the definition of ''bundling'' at FAR 2.101.

[69 FR 21763, Apr. 22, 2004]

Subpart 1807.72—Acquisition Forecasting

1807.7200 Policy.

(a) As required by the Business Opportunity Development Reform Act of 1988, it is NASA policy to—

(1) Prepare an annual forecast and semiannual update of expected contract opportunities or classes of contract opportunities for each fiscal year;

(2) Include in the forecast contract opportunities that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, may be capable of performing; and

(3) Make available such forecasts to the public.

(b) The annual forecast and semiannual update are available on the NASA Acquisition Internet Service (*http://www.hq.nasa.gov/office/procurement/*).

[69 FR 21763, Apr. 22, 2004]

1807.7201 Definitions.

Class of contracts means a grouping of acquisitions, either by dollar value or by the nature of supplies and services to be acquired.

Contract opportunity means planned new contract awards exceeding $25,000.

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1808.8—Acquisition of Printing and Related Supplies

Sec.
1808.870 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 61 FR 47073, Sept. 6, 1996, unless otherwise noted.

Subpart 1808.8—Acquisition of Printing and Related Supplies

1808.870 Contract clause.

The contracting officer shall insert the clause at 1852.208–81, Restrictions on Printing and Duplicating, in solicitations and contracts where there is a requirement for any printing, and/or any duplicating/copying in excess of that described in paragraph (c) of the clause.

PART 1809—CONTRACTOR QUALIFICATIONS

Subpart 1809.1—Responsible Prospective Contractors

Sec.
1809.104–4 Subcontractor responsibility.
1809.105–2 Determinations and documentation.

Subpart 1809.2—Qualifications Requirements

1809.206 Acquisitions subject to qualification requirements.
1809.206–1 General.
1809.206–70 Small businesses.
1809.206–71 Contract clause.

Subpart 1809.4—Debarment, Suspension, and Ineligibility

1809.403 Definitions.

Subpart 1809.5—Organizational and Consultant Conflicts of Interest

1809.505–4 Obtaining access to sensitive information.
1809.507 Solicitation provisions and contract clause.
1809.507–2 Contract clause.

Subpart 1809.6—Contractor Team Arrangements

1809.670 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 47075, Sept. 6, 1996, unless otherwise noted.

Subpart 1809.1—Responsible Prospective Contractors

1809.104–4 Subcontractor responsibility.

Generally, the Canadian Commercial Corporation's (CCC) proposal of a firm as its subcontractor is sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information available to the contracting office, the contracting officer shall request from the CCC and any other sources whatever information is necessary to make the responsibility determination.

Upon request, CCC shall be furnished the rationale for any subsequent determination of nonresponsibility.

1809.105–2 Determinations and documentation.

(a) The contracting officer shall provide written notification to a prospective contractor determined not responsible, which includes the basis for the determination. Notification provides the prospective contractor with the opportunity to take corrective action prior to future solicitations.

[76 FR 72328, Nov. 23, 2011]

Subpart 1809.2—Qualification requirements

1809.206 Acquisitions subject to qualification requirements.

1809.206–1 General. (NASA supplements paragraph (b) and (c))

(c) If an offeror seeks to demonstrate its capability, both the product and the producer must meet the established standards.

[61 FR 47075, Sept. 6, 1996, as amended at 69 FR 21763, Apr. 22, 2004]

1809.206–70 Small businesses.

If a small business otherwise eligible for award has been placed in a special status on a Qualified Products List (Mil-Bul-103) or the Qualified Manufacturers List (QML–38510) established as a part of the NASA Microelectronics Reliability Program and the contracting officer determines that the small business does not appear to have the capacity to perform, the certificate of competency procedures in FAR subpart 19.6 are applicable.

1809.206–71 Contract clause.

When qualified products (end items or components of end items) are being procured, the contracting officer shall insert the clause at 1852.209–70, Product Removal from Qualified Products List, in the solicitation and in the resulting contract.

Subpart 1809.4—Debarment, Suspension, and Ineligibility

1809.403 Definitions.

For purposes of FAR subpart 9.4 and this subpart, the Assistant Administrator for Procurement is the ''debarring official,'' the ''suspending official,'' and the agency head's ''designee.''

Subpart 1809.5—Organizational and Consultant Conflicts of Interest

1809.505–4 Obtaining access to sensitive information.

(b) In accordance with FAR 9.503, the Assistant Administrator for Procurement has determined that it would not be in the Government's interests for NASA to comply strictly with FAR 9.505–4(b) when acquiring services to support management activities and administrative functions. The Assistant Administrator for Procurement has, therefore, waived the requirement that before gaining access to other companies' proprietary or sensitive (see 1837.203–70) information contractors must enter specific agreements with each of those other companies to protect their information from unauthorized use or disclosure. Accordingly, NASA will not require contractors and

subcontractors and their employees in procurements that support management activities and administrative functions to enter into separate, interrelated third party agreements to protect sensitive information from unauthorized use or disclosure. As an alternative to numerous, separate third party agreements, 1837.203–70 prescribes detailed policy and procedures to protect contractors from unauthorized use or disclosure of their sensitive information. Nothing in this section waives the requirements of FAR 37.204 and 1837.204.

[70 FR 35554, June 21, 2005]

1809.507 Solicitation provisions and contract clause.

1809.507–2 Contract clause.

The contracting officer may insert a clause substantially the same as the clause at 1852.209–71, Limitation of Future Contracting, in solicitations and contracts.

Subpart 1809.6—Contractor Team Arrangements

1809.670 Contract clause.

The contracting officer shall insert the clause at 1852.209–72, Composition of the Contractor, in all construction invitations for bids and resulting contracts. The clause may be used in other solicitations and contracts to clarify a contractor team arrangement where the prime contractor consists of more than one legal entity, such as a joint venture.

PART 1811—DESCRIBING AGENCY NEEDS

AUTHORITY: 42 U.S.C. 2473(c)(1).

Subpart 1811.4—Delivery or Performance Schedules

1811.404–70 NASA contract clauses.

The clause at 1852.211–70, Packaging, Handling, and Transportation, must be included in solicitations and contracts for deliverable items, including software, designated as Class I (mission essential), Class II (delicate or sensitive), or Class III (requires special handling or monitoring).

[65 FR 37062, June 13, 2000]

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

Subpart 1812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.
1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

Subpart 1812.70—Commercial Space Hardware or Services

1812.7000 Anchor tenancy contracts.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 47079, Sept. 6, 1996, unless otherwise noted.

Subpart 1812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items. (NASA supplements paragraph (f))

(f)(i) The following clauses are authorized for use in acquisitions of commercial items when required by the clause prescription:

(A) 1852.214–71, Grouping for Aggregate Award.

(B) 1852.214–72, Full Quantities.

(C) 1852.215–84, Ombudsman.

(D) 1852.219–75, Small Business Subcontracting Reporting.

(E) 1852.219–76, NASA 8 Percent Goal.

(F) 1852.223–70, Safety and Health.

(G) 1852.223–71, Frequency Authorization.

(H) 1852.223–72, Safety and Health (Short Form).

(I) 1852.223–73, Safety and Health Plan.

(J) 1852.223–75, Major Breach of Safety and Security.

(K) [Reserved]

(L) 1852.228–76, Cross-Waiver of Liability for International Space Station Activities.

(M) 1852.228–78, Cross-Waiver of Liability for Science or Space Exploration Activities unrelated to the International Space Station.

(N) 1852.246–72, Material Inspection and Receiving Report.

[64 FR 19926, Apr. 23, 1999, as amended at 64 FR 51078, Sept. 21, 1999; 65 FR 37058, June 13, 2000; 65 FR 50153, Aug. 17, 2000; 66 FR 18052, Apr. 5, 2001; 69 FR 26776, May 14, 2004; 77 FR 59341, Sept. 27, 2012]

Subpart 1812.70—Commercial Space Hardware or Services

1812.7000 Anchor tenancy contracts.

(a) Subject to receiving an appropriation that:

(1) Authorizes a multi-year anchor tenancy contract; and

(2) Specifies the commercial space product or service to be developed or used, NASA may enter into a multi-year anchor tenancy contract only if Administrator determines—

(i) The good or service meets the mission requirements of the National Aeronautics and Space Administration;

(ii) The commercially procured good or service is cost effective;

(iii) The good or service is procured through a competitive process;

(iv) Existing or potential customers for the good or service other than the United States Government have been specifically identified;

(v) The long-term viability of the venture is not dependent upon a continued Government market or other nonreimbursable Government support; and

(vi) Private capital is at risk in the venture.

(b) Contracts entered into under such authority may provide for the payment of termination liability in the event that the Government terminates such contracts for its convenience.

(1) Contracts that provide for this payment of termination liability shall include a fixed schedule of such termination liability payments. Liability under such contracts shall not exceed the total payments which the Government would have made after the date of termination to purchase the good or service if the contract were not terminated.

(2) Subject to appropriations, funds available for such termination liability payments may be used for purchase of the good or service upon successful delivery of the good or service pursuant to the contract. In such case, sufficient funds shall remain available to cover any remaining termination liability.

(c) *Limitations.* (1) Contracts entered into under such authority shall not exceed 10 years in duration.

(2) Such contracts shall provide for delivery of the good or service on a firm, fixed price basis.

(3) To the extent practicable, reasonable performance specifications shall be used to define technical requirements in such contracts.

(4) In any such contract, the Administrator shall reserve the right to completely or partially terminate the contract without payment of such termination liability because of the contractor's actual or anticipated failure to perform its contractual obligations.

(d) The term ''anchor tenancy'' means an arrangement in which the United States Government agrees to procure sufficient quantities of a commercial space product or service needed to meet Government mission requirements so that a commercial venture is made viable.

[77 FR 65497, Oct. 29, 2012]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

Sec.
1813.000 Scope of part.
1813.003 Policy.

Subpart 1813.3—Simplified Acquisition Methods

1813.302–570 NASA solicitation provisions.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 63 FR 40189, July 28, 1998, unless otherwise noted.

1813.000 Scope of part.

FAR part 13 and 1813 do not apply to NASA Research Announcements (NRA) and Announcements of Opportunity (AO). These acquisitions shall be conducted in accordance with the procedures in 1835.016–71 and 1872, respectively. However, awards resulting from NRAs or AOs that are to be made as procurement instruments, can be made as either a contract or a purchase order. When a purchase order is used, it must not exceed the simplified acquisition threshold and must include the appropriate clauses pertaining to data rights, key personnel requirements, and any other requirements determined necessary by the contracting officer. Contracting officers must determine whether obtaining the contractor's acceptance of the order is necessary (see FAR 13.302–3(a)).

[65 FR 46628, July 31, 2000]

1813.003 Policy. (NASA supplements paragraph (g))

(g) Acquisitions under these simplified acquisition procedures shall be fixed-price, except as provided under the unpriced purchase order method in FAR 13.302–2.

[63 FR 40189, July 28, 1998, as amended at 64 FR 5620, Feb. 4, 1999]

Subpart 1813.3—Simplified Acquisition Methods

1813.302–570 NASA solicitation provisions.

(a)(1) The contracting officer may use the provision at 1852.213–70, Offeror Representations and Certifications—Other Than Commercial Items, in simplified acquisitions exceeding the mircro-purchase threshold that are for other than commercial items. This provision shall not be used for acquisition of commercial items as defined in FAR 2.101.

(2) This provision provides a single, consolidated list of certifications and representations for the acquisition of other than commercial items using simplified acquisition procedures and is attached to the solicitation for offerors to complete and return with their offer.

(i) Use the provision with its Alternate I in solicitations for acquisitions that are for, or specify the use of recovered materials (see FAR 23.4).

(ii) Use the provision with its Alternate II in solicitations for the acquisition of research, studies, supplies, or services of the type normally acquired from higher education institutions (see FAR 26.3).

(iii) Use the provision with its Alternate III in solicitation which include the clause at FAR 52.227–14, Rights in Data—General (see FAR 27.404(d)(2) and 1827.404(d)).

(b) The contracting officer may insert a provision substantially the same as the provision at 1852.213–71, Evaluation—Other than Commercial Items, in solicitations using simplified acquisition procedures for other than commercial items when a trade-off source selection process will be used, that is, factors in addition to technical acceptability and price will be considered. (*See* FAR 13.106.)

[67 FR 38904, June 6, 2002, as amended at 67 FR 50823, Aug. 6, 2002]

PART 1814—SEALED BIDDING

Subpart 1814.2—Solicitation of Bids

Sec.
1814.201–6 Solicitation provisions.
1814.201–670 NASA solicitation provisions.

Subpart 1814.3—Submission of Bids

1814.302 Bid submission.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 47079, Sept. 6, 1996, unless otherwise noted.

Subpart 1814.2—Solicitation of Bids

1814.201–6 Solicitation provisions.

1814.201–670 NASA solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.214–70, Caution to Offerors Furnishing Descriptive Literature, in invitations for bids. See FAR 52.214–21, Descriptive Literature.

(b) The contracting officer shall insert the provision at 1852.214–71, Grouping for Aggregate Award, in invitations for bids, except for construction, when it is in the Government's best interest not to make award for less than specified quantities solicited for certain items or groupings of certain items. Insert the item numbers and/or descriptions applicable for the particular procurement.

(c) The contracting officer shall insert the provision at 1852.214–72, Full Quantities, in invitations for bids, except for construction, when it is in the Government's best interest not to make award for less than the full quantities solicited.

(d) If a pre-bid conference is planned, the contracting officer shall insert the provision at 1852.215–77, Preproposal/Pre-bid Conference. See 1815.209–70(a).

[61 FR 47079, Sept. 6, 1996, as amended at 63 FR 9966, Feb. 27, 1998]

Subpart 1814.3—Submission of Bids

1814.302 Bid submission. (NASA supplements paragraph (b))

(b) NASA contracting officers shall not consider telegraphic bids communicated by the telephone.

PART 1815—CONTRACTING BY NEGOTIATION

Subpart 1815.2—Solicitation and Receipt of Proposals and Information

Sec.
1815.203–72 Risk Management.
1815.207 Handling proposals and information.
1815.207–70 Release of proposal information.
1815.207–71 Appointing non-Government evaluators as special Government employees.
1815.208 Submission, modification, revision, and withdrawal of proposals.
1815.209 Solicitation provisions and contract clauses.
1815.209–70 NASA solicitation provisions.

Subpart 1815.3—Source Selection

1815.305–70 Identification of unacceptable proposals.
1815.306 Exchanges with offerors after receipt of proposals.

Subpart 1815.4—Contract Pricing

1815.403 Obtaining cost or pricing data.
1815.403–170 Waivers of cost or pricing data.
1815.404–471 NASA structured approach for profit or fee objective.
1815.404–472 Payment of profit or fee under letter contracts.
1815.407 Special cost or pricing areas.
1815.407–2 Make-or-buy programs.
1815.408 Solicitation provisions and contract clauses.
1815.408–70 NASA solicitation provisions and contract clauses.

Subpart 1815.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.504 Award to successful offeror.

Subpart 1815.6—Unsolicited Proposals

1815.602 Policy.
1815.604 Agency points of contact.
1815.606 Agency procedures.
1815.606–70 Relationship of unsolicited proposals to NRAs.
1815.609 Limited use of data.

1815.609–70 Limited use of proposals.
1815.670 Foreign proposals.

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.
1815.7003 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 63 FR 9954, Feb. 27, 1998, unless otherwise noted.

Subpart 1815.2—Solicitation and Receipt of Proposals and Information

1815.203–72 Risk management.

In all RFPs and RFOs for supplies or services for which a technical proposal is required, proposal instructions shall require offerors to identify and discuss risk factors and issues throughout the proposal where they are relevant, and describe their approach to managing these risks.

[65 FR 70316, Nov. 22, 2000]

1815.207 Handling proposals and information.

1815.207–70 Release of proposal information.

(a) NASA personnel participating in any way in the evaluation may not reveal any information concerning the evaluation to anyone not also participating, and then only to the extent that the information is required in connection with the evaluation. When non-NASA personnel participate, they shall be instructed to observe these restrictions.

(b)(1) Except as provided in paragraph (b)(2) of this section, the procurement officer is the approval authority to disclose proposal information outside the Government. If outside evaluators are involved, this authorization may be granted only after compliance with FAR 37.2 and 1837.204, except that the determination of unavailability of Government personnel required by FAR 37.2 is not required for disclosure of proposal information to JPL employees.

(2) Proposal information in the following classes of proposals may be disclosed with the prior written approval of a NASA official one level above the NASA program official responsible for the overall conduct of the evaluation. If outside evaluators are involved, the determination of unavailability of Government personnel required by FAR 37.2 is not required for disclosure in these instances.

(i) Proposals submitted in response to broad agency announcements such as Announcements of Opportunity and NASA Research Announcements;

(ii) Unsolicited proposals; and

(iii) SBIR and STTR proposals.

(3) If JPL personnel, in evaluating proposal information released to them by NASA, require assistance from non-JPL, non-Government evaluators, JPL must obtain written approval to release the information in accordance with paragraphs (b)(1) and (b)(2) of this section.

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44408, Aug. 19, 1998]

1815.207–71 Appointing non-Government evaluators as special Government employees.

(a) Except as provided in paragraph (c) of this section, non-Government evaluators, except employees of JPL, shall be appointed as special Government employees.

(b) Appointment as a special Government employee is a separate action from the approval required by paragraph 1815.207–70(b) and may be processed concurrently. Appointment as a special Government employee shall be made by:

(1) The NASA Headquarters personnel office when the release of proposal information is to be made by a NASA Headquarters office; or

(2) The installation personnel office when the release of proposal information is to be made by the installation.

(c) Non-Government evaluators need not be appointed as special Government employees when they evaluate:

(1) Proposals submitted in response to broad agency announcements such as Announcements of Opportunity and NASA Research Announcements;

(2) Unsolicited proposals; and

(3) SBIR and STTR proposals.

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44408, Aug. 19, 1998]

1815.208 Submission, modification, revision, and withdrawal of proposals. (NASA supplements paragraph (b))

(b) The FAR late proposal criteria do not apply to Announcements of Opportunity, NASA Research Announcements, and Small Business Innovative Research (SBIR) Phase I and Phase II solicitations, and Small Business Technology Transfer (STTR) solicitations. For these solicitations, proposals or proposal modifications received from qualified firms after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received. In such cases, the project office shall investigate the circumstances surrounding the late submission, evaluate its content, and submit written recommendations and findings to the selection official or a designee as to whether there is an advantage to the Government in considering it. The selection official or a designee shall determine whether to consider the late submission.

[63 FR 9954, Feb. 27, 1998, as amended at 69 FR 21764, Apr. 22, 2004]

1815.209 Solicitation provisions and contract clauses. (NASA supplements paragraph (a))

(a) The contracting officer shall insert FAR 52.215–1 in all competitive negotiated solicitations.

1815.209–70 NASA solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.215–77, Preproposal/Pre-bid Conference, in competitive requests for proposals and invitations for bids where the Government intends to conduct a prepoposal or pre-bid conference. Insert the appropriate specific information relating to the conference.

(b) When it is not in the Government's best interest to make award for less than the specified quantities solicited for certain items or groupings of items, the contracting officer shall insert the provision at 1852.214–71, Grouping for Aggregate Award. *See* 1814.201–670(b).

(c) When award will be made only on the full quantities solicited, the contracting officer shall insert the provision at 1852.214–72, Full Quantities. *See* 1814.201–670(c).

(d) The contracting officer shall insert the provision at 1852.215–81, Proposal Page Limitations, in all competitive requests for proposals.

[63 FR 9954, Feb. 27, 1998, as amended at 67 FR 50824, Aug. 6, 2002]

Subpart 1815.3—Source Selection

1815.305–70 Identification of unacceptable proposals.

(a) The contracting officer shall not complete the initial evaluation of any proposal when it is determined that the proposal is unacceptable because:

(1) It does not represent a reasonable initial effort to address the essential requirements of the RFP or clearly demonstrates that the offeror does not understand the requirements;

(2) In research and development acquisitions, a substantial design drawback is evident in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(3) It contains major eficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

(b) The contracting officer shall document the rationale for discontinuing the initial evaluation of a proposal in accordance with this section.

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44408, Aug. 19, 1998]

1815.306 Exchanges with offerors after receipt of proposals. (NASA supplements paragraphs (c), (d), and (e))

(c)(2) A total of no more than three proposals shall be a working goal in establishing the competitive range. Field installations may establish procedures for approval of competitive range determinations commensurate with the complexity or dollar value of an acquisition.

(e)(1) In no case shall the contacting officer relax or amend RFP requirements for any offeror without amending the RFP and permitting the other

offerors an opportunity to propose against the relaxed requirements.

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44408, Aug. 19, 1998; 69 FR 21764, Apr. 22, 2004]

Subpart 1815.4—Contract Pricing

1815.403 Obtaining cost or pricing data.

1815.403–170 Waivers of cost or pricing data.

(a) NASA has waived the requirement for the submission of cost or pricing data when contracting with the Canadian Commercial Corporation (CCC). This waiver applies to the CCC and its subcontractors. The CCC will provide assurance of the fairness and reasonableness of the proposed price. This assurance should be relied on; however, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted by subcontractors to support any required proposal analysis, including a technical analysis and a cost realism analysis. The CCC also will provide for follow-up audit activity to ensure that any excess profits are found and refunded to NASA.

(b) NASA has waived the requirement for the submission of cost or pricing data when contracting for Small Business Innovation Research (SBIR) program Phase II contracts. However, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted to determine price reasonableness and cost realism.

[64 FR 10573, Mar. 5, 1999]

1815.404–471 NASA structured approach for profit or fee objective.

1815.404–472 Payment of profit or fee under letter contracts.

NASA's policy is to pay profit or fee only on definitized contracts.

[65 FR 12485, Mar. 9, 2000]

1815.407 Special cost or pricing areas.

1815.407–2 Make-or-buy programs. (NASA supplements paragraph (e))

(e)(1) Make-or-buy programs should not include items or work efforts estimated to cost less than $500,000.

1815.408 Solicitation provisions and contract clauses.

1815.408–70 NASA solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 1852.215–78, Make-or-Buy Program Requirements, in solicitations requiring make-or-buy programs as provided in FAR 15.407–2(c). This provision shall be used in conjunction with the clause at FAR 52.215–9, Changes or Additions to Make-or-Buy Program. The contracting officer may add additional paragraphs identifying any other information required in order to evaluate the program.

(b) The contracting officer shall insert the clause at 1852.215–79, Price Adjustment for ''Make-or-Buy'' Changes, in contracts that include FAR 52.215–9 with its Alternate I or II. Insert in the appropriate columns the items that will be subject to a reduction in the contract value.

(c) When the solicitation requires the submission of certified cost or pricing data, the contracting officer shall include 1815.215–85, Proposal Adequacy Checklist, in the solicitation to facilitate submission of a thorough, accurate, and complete proposal.

[63 FR 9954, Feb. 27, 1998, as amended at 79 FR 10687, Feb. 26, 2014]

Subpart 1815.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.504 Award to successful offeror.

The reference to notice of award in FAR 15.504 on negotiated acquisitions is a generic one. It relates only to the formal establishment of a contractual

document obligating both the Government and the offeror. The notice is effected by the transmittal of a fully approved and executed definitive contract document, such as the award portion of SF 33, SF 26, SF 1449, or SF 1447, or a letter contract when a definitized contract instrument is not available but the urgency of the requirement necessitates immediate performance. In this latter instance, the procedures for approval and issuance of letter contracts shall be followed.

[63 FR 9954, Feb. 27, 1998, as amended at 69 FR 21764, Apr. 22, 2004]

Subpart 1815.6—Unsolicited Proposals

1815.602 Policy. (NASA paragraphs (1) and (2))

(1) An unsolicited proposal may result in the award of a contract, grant, cooperative agreement, or other agreement. If a grant or cooperative agreement is used, the NASA Grant and Cooperative Agreement Handbook (NPR 5800.1) applies.

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

[63 FR 9954, Feb. 27, 1998, as amended at 69 FR 63459, Nov. 2, 2004]

1815.604 Agency points of contact. (NASA supplements paragraph (a))

(a)(6) Information titled ''Guidance for the Preparation and Submission of Unsolicited Proposals'' is available on the Internet at *http://ec.msfc.nasa.gov/hq/library/unSol-Prop.html*. A deviation is required for use of any modified or summarized version of the Internet information or for alternate means of general dissemination of unsolicited proposal information.

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44409, Aug. 19, 1998; 66 FR 53546, Oct. 23, 2001; 69 FR 21764, Apr. 22, 2004]

1815.606 Agency procedures. (NASA supplements paragraphs (a) and (b))

(a) NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or to the Jet Propulsion Laboratory (JPL) without the offeror's express consent.

[63 FR 9954, Feb. 27, 1998, as amended at 69 FR 21764, Apr. 22, 2004]

1815.606–70 Relationship of unsolicited proposals to NRAs.

An unsolicited proposal for a new effort or a renewal, identified by an evaluating office as being within the scope of an open NRA, shall be evaluated as a response to that NRA (see 1835.016–71), provided that the evaluating office can either:

(a) State that the proposal is not at a competitive disadvantage, or

(b) Give the offeror an opportunity to amend the unsolicited proposal to ensure compliance with the applicable NRA proposal preparation instructions. If these conditions cannot be met, the proposal must be evaluated separately.

[63 FR 9954, Feb. 27, 1998, as amended at 64 FR 48561, Sept. 7, 1999]

1815.609 Limited use of data.

1815.609–70 Limited use of proposals.

Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with, the procedures prescribed in, 1815.207–70.

1815.670 Foreign proposals.

Unsolicited proposals from foreign sources are subject to NPD 1360.2, Initiation and Development of International Cooperation in Space and Aeronautics Programs.

[64 FR 36606, July 7, 1999]

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.

NASA's implementation of an ombudsman program is in NPR 5101.33, Procurement Advocacy Programs.

[63 FR 9954, Feb. 27, 1998, as amended at 65 FR 58931, Oct. 3, 2000; 69 FR 63459, Nov. 2, 2004]

1815.7003 Contract clause.

The contracting officer shall insert a clause substantially the same as the one at 1852.215–84, Ombudsman, in all solicitations (including draft solicitations) and contracts. Use the clause with its Alternate I when a task or delivery order contract is contemplated.

[65 FR 38777, June 22, 2000]

PART 1816—TYPES OF CONTRACTS

Subpart 1816.2—Fixed-Price Contracts

Sec.
1816.202 Firm-fixed-price contracts.
1816.202–70 NASA contract clause.

Subpart 1816.3—Cost-Reimbursement Contracts

1816.303–70 Cost-sharing contracts.
1816.307 Contract clauses.
1816.307–70 NASA contract clauses.

Subpart 1816.4—Incentive Contracts

1816.402 Application of predetermined, formula-type incentives. (NASA paragraphs 1,2 and 3).
1816.402–2 Performance incentives.
1816.402–270 NASA technical performance incentives.
1816.404 Fixed-price contracts with award fees.
1816.405 Cost-reimbursement incentive contracts.
1816.405–2 Cost-plus-award-fee (CPAF) contracts.
1816.405–270 CPAF contracts.
1816.405–271 Base fee.
1816.405–272 Award fee evaluation periods.
1816.405–273 Award fee evaluations.
1816.405–274 Award fee evaluation factors.
1816.405–275 Award fee evaluation rating.
1816.405–276 Award fee payments and limitations.
1816.406 Contract clauses.
1816.406–70 NASA contract clauses.

Subpart 1816.5—Indefinite-Delivery Contracts

1816.506–70 NASA contract clause.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

SOURCE: 62 FR 3478, Jan. 23, 1997, unless otherwise noted.

Subpart 1816.2—Fixed-Price Contracts

1816.202 Firm-fixed-price contracts.

1816.202–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.216–78, Firm-Fixed-Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

Subpart 1816.3—Cost-Reimbursement Contracts

1816.303–70 Cost-sharing contracts.

(a) *Cost-sharing with for-profit organizations.* (1) Cost sharing by for-profit organizations is mandatory in any contract for basic or applied research resulting from an unsolicited proposal, and may be accepted in any other contract when offered by the proposing organization. The requirement for cost-sharing may be waived when the contracting officer determines in writing that the contractor has no commercial, production, education, or service activities that would benefit from the results of the research, and the contractor has no means of recovering its shared costs on such projects.

(2) The contractor's cost-sharing may be any percentage of the project cost. In determining the amount of cost-sharing, the contracting officer shall consider the relative benefits to the contractor and the Government. Factors that should be considered include—

(i) The potential for the contractor to recover its contribution from non-Federal sources;

(ii) The extent to which the particular area of research requires special stimulus in the national interest; and

(iii) The extent to which the research effort or result is likely to enhance the

contractor's capability, expertise, or competitive advantage.

(b) *Cost-sharing with not-for-profit organizations.* (1) Costs to perform research stemming from an unsolicited proposal by universities and other educational or not-for-profit institutions are usually fully reimbursed. When the contracting officer determines that there is a potential for significant benefit to the institution cost-sharing will be considered.

(2) The contracting officer will normally limit the institution's share to no more than 10 percent of the project's cost.

(c) *Implementation.* Cost-sharing shall be stated as a minimum percentage of the total allowable costs of the project. The contractor's contributed costs may not be charged to the Government under any other contract or grant, including allocation to other contracts and grants as part of an independent research and development program.

1816.307 Contract clauses. (NASA supplements paragraphs (a), (b), (d), and (g)).

(a)(1) In paragraph (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216–7, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215–2, Audit and Records—Negotiation.

(g)(1) In paragraph (g)(2)(ii) of the Allowable Cost and Payment—Facilities clause at FAR 52.216–13, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215–2, Audit and Records—Negotiation.

[62 FR 3478, Jan. 23, 1997, as amended at 69 FR 21764, Apr. 22, 2004]

1816.307–70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.216–73, Estimated Cost and Cost Sharing, in each contract in which costs are shared by the contractor pursuant to 1816.303–70.

(b) The contracting officer shall insert the clause substantially as stated at 1852.216–74, Estimated Cost and Fixed Fee, in cost-plus-fixed-fee contracts.

(c) The contracting officer may insert the clause at 1852.216–75, Payment of Fixed Fee, in cost-plus-fixed-fee contracts. Modifications to the clause are authorized.

(d) The contracting officer may insert the clause at 1852.216–81, Estimated Cost, in cost-no-fee contracts that are not cost sharing or facilities contracts.

(e) The contracting officer may insert a clause substantially as stated at 1852.216–87, Submission of Vouchers for Payment, in cost-reimbursement solicitations and contracts.

(f) When either FAR clause 52.216–7, Allowable Cost and Payment, or FAR clause 52.216–13, Allowable Cost and Payment—Facilities, is included in the contract, as prescribed at FAR 16.307 (a) and (g), the contracting officer should include the clause at 1852.216–89, Assignment and Release Forms.

(g) As required by section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), use the clause at 1852.216–90, Allowability of Costs Incurred in Connection With a Whistleblower Proceeding—

(1) In task orders entered pursuant to contracts awarded before September 30, 2013, that include the clause at FAR 52.216–7, Allowable Cost and Payment; and

(2) In contracts awarded before September 30, 2013, that—

(i) Include the clause at FAR 52.216–7, Allowable Cost and Payment; and

(ii) Are modified to include the clause at 1852.203–71, Requirement to Inform Employees of Whistleblower Rights, dated June 2013 or later.

[62 FR 3478, Jan. 23, 1997, as amended at 79 FR 43961, July 29, 2014]

Subpart 1816.4—Incentive Contracts

1816.402 Application of predetermined, formula-type incentives. (NASA paragraphs 1, 2 and 3).

When considering the use of a quality, performance, or schedule incentive, the following guidance applies:

(1) A positive incentive is generally not appropriate unless—

(i) Performance above the target (or minimum, if there are no negative incentives) level is of significant value to the Government;

(ii) The value of the higher level of performance is worth the additional cost/fee;

(iii) The attainment of the higher level of performance is clearly within the control of the contractor; and

(iv) An upper limit is identified, beyond which no further incentive is earned.

(2) A negative incentive is generally not appropriate unless—

(i) A target level of performance can be established, which the contractor can reasonably be expected to reach with a diligent effort, but a lower level of performance is also minimally acceptable;

(ii) The value of the negative incentive is commensurate with the lower level of performance and any additional administrative costs; and

(iii) Factors likely to prevent attainment of the target level of performance are clearly within the control of the contractor.

(3) When a negative incentive is used, the contract must indicate a level below which performance is not acceptable.

[63 FR 12997, Mar. 17, 1998, as amended at 69 FR 21764, Apr. 22, 2004]

1816.402–2 Performance incentives.

1816.402–270 NASA technical performance incentives.

(a) Pursuant to the guidelines in 1816.402, NASA has determined that a performance incentive shall be included in all contracts based on performance-oriented documents (see FAR 11.101(a)), except those awarded under the commercial item procedures of FAR part 12, where the primary deliverable(s) is (are) hardware with a total value (including options) greater than $25 million. Any exception to this requirement shall be approved in writing by the head of contracting activity. Performance incentives may be included in hardware contracts valued under $25 million acquired under procedures other than FAR part 12 at the discretion of the procurement officer upon consideration of the guidelines in 1816.402. Performance incentives, which are objective and measure hardware performance after delivery and acceptance, are separate from other incentives, such as cost or delivery incentives.

(b) When a performance incentive is used, it shall be structured to be both positive and negative based on hardware performance after delivery and acceptance, unless the contract type requires complete contractor liability for product performance (e.g., fixed price). In this latter case, a negative incentive is not required. In structuring the incentives, the contract shall establish a standard level of performance based on the salient hardware performance requirement. This standard performance level is normally the contract's minimum performance requirement. No incentive amount is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance above and, when a negative incentive is used, below the standard. Specific incentive amounts shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to, when a negative incentive is included, minimal beneficial performance or total failure (maximum negative incentive). The relationship between any given incentive, either positive and negative, and its associated unit of measurement should reflect the value to the Government of that level of hardware performance. The contractor should not be rewarded for above-standard performance levels that are of no benefit to the Government.

(c) The final calculation of the performance incentive shall be done when hardware performance, as defined in

the contract, ceases or when the maximum positive incentive is reached. When hardware performance ceases below the standard established in the contract and a negative incentive is included, the Government shall calculate the amount due and the contractor shall pay the Government that amount. Once hardware performance exceeds the standard, the contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When hardware performance ceases above the standard level of performance, or when the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(d) When the deliverable hardware lends itself to multiple, meaningful measures of performance, multiple performance incentives may be established. When the contract requires the sequential delivery of several hardware items (e.g. multiple spacecraft), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables.

(e) In determining the value of the maximum performance incentives available, the contracting officer shall follow the following rules:

(1) For a CPFF contract, the sum of the maximum positive performance incentive and fixed fee shall not exceed the limitations in FAR 15.404–4(c)(4)(i).

(2) For an award fee contract.

(i) The individual values of the maximum positive performance incentive and the total potential award fee (including any base fee) shall each be at least one-third of the total potential contract fee. The remaining one-third of the total potential contract fee may be divided between award fee and the maximum performance incentive at the discretion of the contracting officer.

(ii) The maximum negative performance incentive for research and development hardware (e.g., the first and second units) shall be equal in amount to the total *earned* award fee (including any base fee). The maximum negative performance incentives for production hardware (e.g., the third and all subsequent units of any hardware items) shall be equal in amount to the total *potential* award fee (including any base fee). Where one contract contains both cases described above, any base fee shall be allocated reasonably among the items.

(3) For cost reimbursement contracts other than award fee contracts, the maximum negative performance incentives shall not exceed the total earned fee under the contract.

[62 FR 3478, Jan. 23, 1997, as amended at 62 FR 58687, Oct. 30, 1997; 63 FR 9965, Feb. 27, 1998; 63 FR 12997, Mar. 17, 1998; 63 FR 28285, May 22, 1998; 68 FR 23424, May 2, 2003; 69 FR 21764, Apr. 22, 2004]

1816.404 Fixed-price contracts with award fees.

Section 1816.405–2 applies to the use of FPAF contracts as if they were CPAF contracts. However, neither base fee (see 1816.405–271) nor evaluation of cost control (see 1816.405–274) apply to FPAF contracts.

[62 FR 58687, Oct. 30, 1997]

1816.405 Cost-reimbursement incentive contracts.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997]

1816.405–2 Cost-plus-award-fee (CPAF) contracts.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997]

1816.405–270 CPAF contracts.

(a) Use of an award fee incentive requires advance approval by the Assistant Administrator for Procurement. Requests for approval, that include Determination & Findings (D&F) cited in paragraph (b) of this section, shall be submitted to Headquarters Office of Procurement, Program Operations Division.

(b) Contracting officers shall prepare a D&F in accordance with FAR 16.401(d) prior to using an award fee incentive. In addition to the items identified in FAR 16.401(e)(1), D&Fs will include a discussion of the other types of contracts considered and shall indicate why an award fee incentive is the appropriate choice. Award fee incentives

should not be used on contracts with a total estimated cost and fee less than $2 million per year. Use of award fee incentive for lower-valued acquisitions may be authorized in exceptional situations such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

(c) Except as provided in paragraph (d) of this section, an award fee incentive may be used in conjunction with other contract types for aspects of performance that cannot be objectively assessed. In such cases, the cost incentive is based on objective formulas inherent in the other contract types (*e.g.*, FPI, CPIF), and the award fee provision should not separately incentivize cost performance.

(d) Award fee incentives shall not be used with a cost-plus-fixed-fee (CPFF) contract.

[76 FR 6697, Feb. 8, 2011]

1816.405–271 Base fee.

(a) A base fee shall not be used on CPAF contracts for which the periodic award fee evaluations are final (1816.405–273(a)). In these circumstances, contractor performance during any award fee period is independent of and has no effect on subsequent performance periods or the final results at contract completion. For other contracts, such as those for hardware or software development, the procurement officer may authorize the use of a base fee not to exceed 3 percent. Base fee shall not be used when an award fee incentive is used in conjunction with another contract type (*e.g.*, CPIF/AF).

(b) When a base fee is authorized for use in a CPAF contract, it shall be paid only if the final award fee evaluation is ''satisfactory'' or better. (*See* 1816.405–273 and 1816.405–275) Pending final evaluation, base fee may be paid during the life of the contract at defined intervals on a provisional basis. If the final award fee evaluation is ''unsatisfactory'', all provisional base fee payments shall be refunded to the Government.

[76 FR 6697, Feb. 8, 2011]

1816.405–272 Award fee evaluation periods.

(a) Award fee evaluation periods, including those for interim evaluations, should be at least 6 months in length. When appropriate, the procurement officer may authorize shorter evaluation periods after ensuring that the additional administrative costs associated with the shorter periods are offset by benefits accruing to the Government. Where practicable, such as developmental contracts with defined performance milestones (e.g., Preliminary Design Review, Critical Design Review, initial system test), establishing evaluation periods at conclusion of the milestones rather than calendar dates, or in combination with calendar dates should be considered. In no case shall an evaluation period be longer than 12 months.

(b) A portion of the total available award fee contract shall be allocated to each of the evaluation periods. This allocation may result in an equal or unequal distribution of fee among the periods. The contracting officer should consider the nature of each contract and the incentive effects of fee distribution in determining the appropriate allocation structure.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997, as amended at 63 FR 13133, Mar. 18, 1998]

1816.405–273 Award fee evaluations.

(a) *Service contracts*. On contracts where the contract deliverable is the performance of a service over any given time period, contractor performance is often definitively measurable within each evaluation period. In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. Unearned award fee in any given period in a service contract is lost and shall not be carried forward, or ''rolled-over,'' into subsequent periods.

(b) *End item contracts*. On contracts, such as those for end item deliverables, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the

total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. In addition to the final evaluation, interim evaluations are done to monitor performance prior to contract completion, provide feedback to the contractor on the Government's assessment of the quality of its performance, and establish the basis for making interim award fee payments (see 1816.405–276(a)). These interim evaluations and associated interim award fee payments are superseded by the fee determination made in the final evaluation at contract completion. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payments.

(c) *Control of evaluations.* Interim and final evaluations may be used to provide past performance information during the source selection process in future acquisitions and should be marked and controlled as ''Source Selection Information—See FAR 3.104''.

[63 FR 13133, Mar. 18, 1998]

1816.405–274 Award fee evaluation factors.

(a) Explicit evaluation factors shall be established for each award fee period. Factors shall be linked to acquisition objectives which shall be defined in terms of contract cost, schedule, and technical performance. If used, subfactors should be limited to the minimum necessary to ensure a thorough evaluation and an effective incentive.

(b) Evaluation factors will be developed by the contracting officer based upon the characteristics of an individual procurement. Cost control, schedule, and technical performance considerations shall be included as evaluation factors in all CPAF contracts, as applicable. When explicit evaluation factor weightings are used, cost control shall be no less than 25 percent of the total weighted evaluation factors. The predominant consideration of the cost control evaluation should be a measurement of the contractor's performance against the negotiated estimated cost of the contract. This estimated cost may include the value of undefinitized change orders when appropriate.

(c)(1) The technical factor must include consideration of risk management (including mission success, safety, security, health, export control, and damage to the environment, as appropriate) unless waived at a level above the contracting officer, with the concurrence of the project manager. The rationale for any waiver shall be documented in the contract file. When safety, export control, or security are considered under the technical factor, the award fee plan shall allow the following fee determinations, regardless of contractor performance in other evaluation factors, when there is a major breach of safety or security.

(i) For evaluation of service contracts under 1816.405–273(a), an overall fee rating of unsatisfactory for any evaluation period in which there is a major breach of safety or security.

(ii) For evaluation of end item contracts under 1816.405–273(b), an overall fee rating of unsatisfactory for any interim evaluation period in which there is a major breach of safety or security. To ensure that the final award fee evaluation at contract completion reflects any major breach of safety or security, in an interim period, the overall award fee pool shall be reduced by the amount of the fee available for the period in which the major breach occurred if an unsatisfactory fee rating was assigned because of a major breach of safety or security.

(2) A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than $1 million; or in any ''willful'' or ''repeat'' violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(3) A major breach of security may occur on or off Government installations, but must be directly related to the work on the contract. A major breach of security is an act or omission

by the contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than $250,000, or theft greater than $250,000.

(4) The Assistant Administrator for Procurement shall be notified prior to the determination of an unsatisfactory award fee rating because of a major breach of safety or security.

(d) In rare circumstances, contract costs may increase for reasons outside the contractor's control and for which the contractor is not entitled to an equitable adjustment. One example is a weather-related launch delay on a launch support contract. The Government shall take such situations into consideration when evaluating contractor cost control.

(e) Emphasis on cost control should be balanced against other performance requirement objectives. The contractor should not be incentivized to pursue cost control to the point that overall performance is significantly degraded. For example, incentivizing an underrun that results in direct negative impacts on technical performance, safety, or other critical contract objectives is both undesirable and counterproductive. Therefore, evaluation of cost control shall conform to the following guidelines:

(1) Normally, the contractor should be given an unsatisfactory rating for cost control when there is a significant overrun within its control. However, the contractor may receive a satisfactory or higher rating for cost control if the overrun is insignificant. Award fee ratings should decrease sharply as the size of the overrun increases. In any evaluation of contractor overrun performance, the Government shall consider the reasons for the overrun and assess the extent and effectiveness of the contractor's efforts to control or mitigate the overrun.

(2) The contractor should normally be rewarded for an underrun within its control, up to the maximum award fee rating allocated for cost control, provided the adjectival rating for all other award fee evaluation factors is very good or higher (*see* FAR 16.401(e)(iv)).

(3) The contractor should be rewarded for meeting the estimated cost of the contract, but not to the maximum rating allocated for cost control, to the degree that the contractor has prudently managed costs while meeting contract requirements. No award shall be given in this circumstance unless the average adjectival rating for all other award fee evaluation factors is satisfactory or higher.

(f) When an AF arrangement is used in conjunction with another contract type, the award fee's cost control factor will only apply to a subjective assessment of the contractor's efforts to control costs and not the actual cost outcome incentivized under the basic contract type (*e.g.* CPIF, FPIF).

(g)(1) The contractor's performance against the subcontracting plan incorporated in the contract shall be evaluated. Emphasis may be placed on the contractor's accomplishment of its goals for subcontracting with small business, HUBZone small business, women-owned small business, veteran-owned small business, and service-disabled veteran-owned small business concerns.

(2) The contractor's performance against the contract target for participation as subcontractors by small disadvantaged business concerns in the NAICS Major Groups designated by the Department of Commerce (*see* FAR 19.201(c)) shall also be evaluated if the clause at FAR 52.219–26, Small Disadvantaged Business Participation—Incentive Subcontracting, is not included in the contract (*see* FAR 19.1204(c)).

(3) The contractor's achievements in subcontracting high technology efforts as well as the contractor's performance under the Mentor-Protégé Program, if applicable, may also be evaluated.

(4) The evaluation weight given to the contractor's performance against the considerations in paragraphs (g)(1) through (g)(3) of this section should be significant (up to 15 percent of available award fee). The weight should motivate the contractor to focus management attention to subcontracting with small, HUBZone, women-owned, veteran-owned, and service-disabled veteran-owned small business concerns,

and with small disadvantaged business concerns in designated NAICS Major Groups to the maximum extent practicable, consistent with efficient contract performance.

(h) When contract changes are anticipated, the contractor's responsiveness to requests for change proposals should be evaluated. This evaluation should include the contractor's submission of timely, complete proposals and cooperation in negotiating the change.

(i) Only the award fee performance evaluation factors set forth in the performance evaluation plan shall be used to determine award fee scores.

(j) The Government may unilaterally modify the applicable award fee performance evaluation factors and performance evaluation areas prior to the start of an evaluation period. The contracting officer shall notify the contractor in writing of any such changes 30 days prior to the start of the relevant evaluation period.

[76 FR 6697, Feb. 8, 2011]

1816.405–275 Award fee evaluation rating.

(a) All award fee contracts shall utilize the adjectival rating categories and associated descriptions as well as the award fee pool available to be earned percentages for each adjectival rating category contained in FAR 16.401(e)(iv).

(b) The following numerical scoring system shall be used in conjunction with the FAR adjectival rating categories and associated descriptions (*see* FAR 16.401(e)(iv)).

(1) *Excellent* (100–91)

(2) *Very good* (90–76)

(3) *Good* (75–51)

(4) *Satisfactory* (50)

(5) *Unsatisfactory* (less than 50) No award fee shall be paid for an unsatisfactory rating.

(c) As a benchmark for evaluation, in order to be rated ''Excellent'' overall, the contractor would typically be under cost, on or ahead of schedule, and providing outstanding technical performance.

(d) A weighted scoring system appropriate for the circumstances of the individual contract requirement should be developed. In this system, each evaluation factor (*e.g.*, technical, schedule, cost control) is assigned a specific percentage weighting with the cumulative weightings of all factors totaling 100. During the award fee evaluation, each factor is scored from 0–100 according to the ratings defined in 1816.405–275(b). The numerical score for each factor is then multiplied by the weighting for that factor to determine the weighted score. For example, if the technical factor has a weighting of 60 percent and the numerical score for that factor is 80, the weighted technical score is 48 (80 × 60 percent). The weighted scores for each evaluation factor are then added to determine the total award fee score.

[76 FR 6698, Feb. 8, 2011]

1816.405–276 Award fee payments and limitations.

(a) *Interim award fee payments.* The amount of an interim award fee payment (see 1816.405–273(b)) is limited to the lesser of the interim evaluation score or 80 percent of the fee allocated to that interim period less any provisional payments (see paragraph (b) of this subsection) made during the period.

(b) *Provisional award fee payments.* Provisional award fee payments are payments made within evaluation periods prior to an interim or final evaluation for that period. Provisional payments may be included in the contract and should be negotiated on a case-by-case basis. For a service contract, the total amount of award fee available in an evaluation period that may be provisionally paid is the lesser of a percentage stipulated in the contract (but not exceeding 80 percent) or the prior period's evaluation score. For an end item contract, the total amount of provisional payments in a period is limited to a percentage not to exceed 80 percent of the prior interim period's evaluation score.

(c) *Fee payment.* The Fee Determination Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, interim or final, due the contractor will be paid no later

than 60 calendar days after the end of the period being evaluated.

[63 FR 13134, Mar. 18, 1998]

1816.406 Contract clauses.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997]

1816.406–70 NASA contract clauses.

(a) As authorized by FAR 16.406(e), the contracting officer shall insert the clause at 1852.216–76, Award Fee for Service Contracts, in solicitations and contracts when an award fee contract is contemplated and the contract deliverable is the performance of a service.

(b) As authorized by FAR 16.406(e), the contracting officer shall insert the clause at 1852.216–77, Award Fee for End Item Contracts, in solicitations and contracts when an award fee contract is contemplated and the contract deliverables are hardware or other end items for which total contractor performance cannot be measured until the end of the contract. When the clause is used in a fixed-price award fee contract, it shall be modified by deleting references to base fee in paragraphs (a), and by deleting paragraph (c)(1), the last sentence of (c)(4), and the first sentence of (c)(5).

(c) The contracting officer may insert a clause substantially as stated at 1852.216–83, Fixed Price Incentive, in fixed-price-incentive solicitations and contracts utilizing firm or successive targets. For items subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(d) The contracting officer shall insert the clause at 1852.216–84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts.

(e) The contracting officer may insert the clause at 1852.216–85, Estimated Cost and Award Fee, in cost an award fee solicitations and contracts. When the contract includes performance incentives, use Alternate I. When the clause is used in a fixed-price award fee contract, it shall be modified to delete references to base fee and to reflect the contract type.

(f) As provided at 1816.402–270, the contracting officer shall insert a clause substantially as stated at 1852.216–88, Performance Incentive, when the primary deliverable(s) is (are) hardware and total estimated cost and fee is greater than $25 million. A clause substantially as stated at 1852.216–88 may be included in lower dollar value hardware contracts with the approval of the procurement officer.

[62 FR 3478, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, 36707, July 9, 1997; 62 FR 58687, Oct. 30, 1997; 63 FR 13134, Mar. 18, 1998]

Subpart 1816.5—Indefinite-Delivery Contracts

1816.506–70 NASA contract clause.

Insert the clause at 1852.216–80, Task Ordering Procedure, in solicitations and contracts when an indefinite-delivery, task order contract is contemplated. The clause is applicable to both fixed-price and cost-reimbursement type contracts. If the contract does not require 533M reporting (See NPR 9501.2, NASA Contractor Financial Management Reporting System), use the clause with its Alternate I.

[62 FR 3478, Jan. 23, 1997, as amended at 64 FR 51079, Sept. 21, 1999; 69 FR 63459, Nov. 2, 2004]

PART 1817—SPECIAL CONTRACTING METHODS

Subpart 1817.2—Options

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1817.7300 Definitions.
1817.7302 Contract clauses.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 61 FR 55753, Oct. 29, 1996, unless otherwise noted.

Subpart 1817.2—Options

1817.200 Scope of subpart.

FAR subpart 17.2 applies to all NASA contracts.

1817.204 Contracts.

(e)(i) The 5-year limitation (basic plus option periods) applies to all NASA contracts regardless of type and other procurement award instruments. This includes agreements (e.g. basic ordering agreements, blanket purchase agreements), interagency acquisitions, and orders placed under agreements or awarded under a Federal Supply Schedule or other indefinite delivery/indefinite quantity contracts awarded by other agencies.

(iii) Requests for deviations from the 5-year limitation policy shall be sent to the Assistant Administrator for Procurement (Code HS) and shall include justification for exceeding five years. The justification shall discuss planned future assessment of continued performance either prior to exercise of options or at the mid-term of a basic contract with no options. Evidence shall also be included showing that the extended years can be reasonably priced.

[69 FR 9964, Mar. 3, 2004, as amended at 69 FR 21764, Apr. 22, 2004]

1817.208 Solicitation provisions and contract clauses. (NASA supplements paragraph (c))

(c)(3) The contracting officer shall insert a provision substantially the same as FAR 52.217–5 in cost reimbursement contracts when the other conditions of FAR 17.208(c) are met.

Subpart 1817.71—Exchange or Sale of Personal Property

1817.7101 Policy.

(a) Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C.481(c)), authorizes the exchange or sale of Government personal property and the application of the exchange allowance or proceeds from the sale to the acquisition of similar property for replacement purposes. The transactions must be evidenced in writing.

(b) NASA installations and contractors are authorized to conduct exchange/sale transactions as long as the requirements and restrictions of NPR 4300.1 and the Federal Property Management Regulations, Subchapter H, part 101–46, are followed. In conducting such exchanges/sales, NASA contractors must obtain the contracting officer's prior written approval and must report the transactions to the cognizant NASA installation Property Disposal Officer (PDO).

[61 FR 55753, Oct. 29, 1996, as amended at 65 FR 58932, Oct. 3, 2000; 69 FR 63459, Nov. 2, 2004]

Subpart 1817.73—Phased Acquisition

1817.7300 Definitions.

(a) *Down-selection*. In a phased acquisition, the process of selecting contractors for later phases from among the preceding phase contractors.

(b) *Phased Acquisition*. An incremental acquisition implementation comprised of several distinct phases where the realization of program/project objectives requires a planned, sequential acquisition of each phase. The phases may be acquired separately, in combination, or through a down-selection strategy.

(c) *Progressive Competition*. A type of down-selection strategy for a phased acquisition. In this method, a single solicitation is issued for all phases of the program. The initial phase contracts are awarded, and the contractors for subsequent phases are expected to be chosen through a down-selection from among the preceding phase contractors. In each phase, progressively fewer contracts are awarded until a single contractor is chosen for the final phase. Normally, all down-selections are accomplished without issuance of a new, formal solicitation.

1817.7302 Contract clauses.

(a) The contracting officer shall insert the clause at 1852.217–71, Phased Acquisition Using Down-Selection Procedures, in solicitations and contracts for phased acquisitions using down-selection procedures other than the progressive competition technique. The

clause may be modified as appropriate if the acquisition has more than two phases. The clause shall be included in the solicitation for each phase and in all contracts except that for the final phase.

(b) The contracting officer shall insert the clause at 1852.217–72, Phased Acquisition Using Progressive Competition Down-Selection Procedures, in solicitations and contracts for phased acquisitions using the progressive competition technique. The clause may be modified as appropriate if the acquisition has more than two phases. The clause shall be included in the initial phase solicitation and all contracts except that for the final phase.

[63 FR 56091, Oct. 21, 1998, as amended at 69 FR 21764, Apr. 22, 2004]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1819—SMALL BUSINESS PROGRAMS

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Subpart 1819.73—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs

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1819.7302 NASA contract clauses.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 36707, July 9, 1997, unless otherwise noted.

1819.001 Definitions.

High-Tech as used in this part means research and/or development efforts that are within or advance the state-of-the-art in a technology discipline and are performed primarily by professional engineers, scientists, and highly skilled and trained technicians or specialists.

Subpart 1819.2—Policies

1819.201 General policy. (NASA supplements paragraphs (a), (c), (d), and (f))

(a)(i) NASA is committed to providing to small, veteran-owned small business, service-disabled veteran-owned small business, HUBZone, small disadvantaged, and women-owned small business concerns, maximum practicable opportunities to participate in Agency acquisitions at the prime contract level. The participation of NASA prime contractors in providing subcontracting opportunities to such entities is also an essential part of the Agency's commitment. The participation of these entities is particularly emphasized in high-technology areas where they have not traditionally dominated.

(ii) NASA annually negotiates Agency small, service-disabled veteran-owned small business, HUBZone, small disadvantaged, and women-owned small business prime and subcontracting goals with the Small Business Administration pursuant to section 15(g) of the Small Business Act (15 U.S.C. 644). In addition, NASA has the following statutory goals based on the

total value of prime and subcontract awards:

(A) Under Public Laws 101–144, 101–507, and 102–389, an annual goal of at least 8 percent for prime and subcontract awards to small disadvantaged business (SDB) concerns, Historically Black Colleges and Universities (HBCUs), minority institutions (MIs), and women-owned small businesses (WOSBs) (see 1819.7000); and

(B) Under 10 U.S.C. 2323, an annual goal of 5 percent for prime and subcontract awards to SDBs, HBCUs, and WOSBs.

[62 FR 36707, July 9, 1997, as amended at 64 FR 25215, May 11, 1999; 65 FR 38777, June 22, 2000; 65 FR 58932, Oct. 3, 2000; 67 FR 53947, Oct. 23, 2001; 69 FR 21765, Apr. 22, 2004]

1819.302 Protesting a small business representation. (NASA supplements paragraph (d))

(d)(1) The contracting officer shall not make awards of small business set-aside acquisitions before the expiration of the period for receipt of a size standard protest.

Subpart 1819.7—The Small Business Subcontracting Program

1819.708 Contract clauses. (NASA supplements paragraph (b))

(b)(1) The contracting officer shall use the clause at FAR 52.219–9 with its Alternate II when contracting by negotiation.

1819.708–70 NASA solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 1852.219–73, Small Business Subcontracting Plan, in invitations for bids containing the clause at FAR 52.219–9 with its Alternate I. Insert in the last sentence the number of calendar days after request that the offeror must submit a complete plan.

(b) The contracting officer shall insert the clause at 1852.21975, Small Business Subcontracting Reporting, in solicitations and contracts containing the clause at FAR 52.219–9, except for contracts covered by an approved commercial plan.

[64 FR 25215, May 11, 1999]

Subpart 1819.10—Small Business Competitiveness Demonstration Program

1819.1005 Applicability.

(b) The targeted industry categories for NASA and their North American Industry Classification System (NAICS) codes are:

NAICS code	Industry category
334111	Electronic Computer Manufacturing.
334418	Printed Circuit Assembly (Electronic Assembly) Manufacturing.
334613	Magnetic and Optical Recording Media Manufacturing.
334119	Other Computer Peripheral Equipment Manufacturing.
33422	Radio and Television Broadcasting and Wireless Communication Equipment Manufacturing.
336415	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing.
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing.
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instrument Manufacturing.
333314	Optical Instrument and Lens Manufacturing.
541511	Custom Computer Programming Services.
541512	Computer Systems Design Services.
51421	Data Processing Services.
541519	Other Computer Related Services.

[65 FR 58932, Oct. 3, 2000, as amended at 67 FR 50824, Aug. 6, 2002]

Subpart 1819.70—NASA 8 Percent Goal

1819.7003 Contract clause.

The contracting officer shall insert the clause at 1852.219–76, NASA 8 Percent Goal, in all solicitations and contracts other than those below the simplified acquisition threshold or when the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

Subpart 1819.71—NASA Rural Area Small Business Plan

1819.7101 Definition.

Rural area means a county with a population of fewer than twenty thousand individuals.

1819.7102 General.

Pursuant to Public Law 100–590, NASA established a Rural Area Business Enterprise Development Plan, including methods for encouraging prime and subcontractors to use small business concerns located in rural areas as subcontractors and suppliers. One method is to encourage the contractor to use its best efforts to comply with the intent of the statute.

1819.7103 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 1852.219–74, Use of Rural Area Small Businesses, in solicitations and contracts that offer subcontracting possibilities or that are expected to exceed $550,000 ($1,000,000 for construction of public facility) unless the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

[62 FR 36707, July 9, 1997, as amended at 71 FR 71073, Dec. 8, 2006]

Subpart 1819.72—NASA Mentor-Protégé Program

SOURCE: 74 FR 25672, May 29, 2009, unless otherwise noted.

1819.7201 Scope of subpart.

(a) This subpart implements the NASA Mentor-Protégé Program (hereafter referred to as the Program) established under the authority of Title 42, U.S.C., 2473(c)(1). The purpose of the Program is to:

(1) Provide incentives to NASA contractors, performing under at least one active approved subcontracting plan negotiated with NASA to assist protégés in enhancing their capabilities to satisfy NASA and other contract and subcontract requirements;

(2) Increase the overall participation of protégés as subcontractors and suppliers under NASA contracts, other Federal agency contracts, and commercial contracts; and

(3) Foster the establishment of long-term business relationships between protégés and mentors.

(b) Under the Program, eligible entities approved as mentors will enter into mentor-protégé agreements with eligible protégés to provide appropriate developmental assistance to enhance the capabilities of the protégés to perform as subcontractors and suppliers. NASA may provide the mentor award fee incentives. Additionally, this subpart explains the calculated subcontracting credit for a mentor-protégé program pursuant to FAR 52.219–9, Small Business Subcontracting Plan.

1819.7202 Eligibility.

(a) *Eligibility of Mentors:* To be eligible to participate as a mentor, an entity must be—

(1) A large prime contractor performing under contracts with at least one approved subcontracting plan negotiated with NASA, pursuant to FAR subpart 19.7, The Small Business Subcontracting Program. A contractor may apply to become a mentor even if they currently are not performing under a NASA contract with an approved subcontracting plan, if they are currently performing for another Federal Agency under a contract with an approved subcontracting plan. A NASA

mentor-protégé agreement will not be approved until such time the mentor company is performing under a NASA contract with an approved subcontracting plan; and

(2) A contractor eligible for receipt of Government contracts. (i) An entity may not be approved for participation in the Program as a mentor if, at the time of requesting participation in the program, it is currently debarred or suspended from contracting with the Federal Government pursuant to FAR subpart 9.4, Debarment, Suspension, and Ineligibility.

(b) *Eligibility of Protégés:* To be eligible to participate as a protégé, an entity must—

(1) Be classified as a Small Disadvantaged Business (SDB), a women-owned small business, a HUBZone small business, a veteran-owned or service-disabled veteran-owned small business, an historically black college and university, minority institution of higher education, as defined in FAR part 2, Definitions of Parts and Terms, an active NASA SBIR Phase II company, or a non-profit agency employing people who are blind or severely disabled as defined in 41 CFR chapter 51.

(2) Be eligible for the award of Federal contracts; and

(3) Be a small business according to the Small Business Administration (SBA) size standard for the North American Industry Classification System (NAICS) code that represents the contemplated supplies or services to be provided by the protégé to the mentor if the protégé is representing itself as a women-owned small business, HUBZone small business, or a veteran-owned or service-disabled veteran-owned small business.

(4) Except for SDBs, a protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentors may rely in good faith on written representations by potential protégés that they meet the specified eligibility requirements. SDB status eligibility and documentation requirements are determined according to FAR 19.304.

1819.7203 Mentor approval process.

(a) An entity seeking to participate as a mentor must apply to the NASA Headquarters Office of Small Business Programs (OSBP), to establish its initial eligibility and approval as a mentor, prior to submission of a mentor-protégé agreement.

(b) The application must provide the following information:

(1) A statement that the entity is currently performing under at least one active approved subcontracting plan negotiated with NASA pursuant to FAR 19.702, The Small Business Subcontracting Program, and that the entity is currently eligible for the award of Government contracts.

(2) A summary of the entity's historical and recent activities and accomplishments under its small and disadvantaged business utilization program.

(3) The total dollar amount of NASA contracts and subcontracts that the entity received during the two preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(4) The total dollar amount of all other Federal agency contracts and subcontracts that the entity received during the two preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(5) The total dollar amount of subcontracts that the entity awarded under NASA contracts during the two preceding fiscal years.

(6) The total dollar amount of subcontracts that the entity awarded under all other Federal agency contracts during the two preceding fiscal years.

(7) The total dollar amount and percentage of subcontracts that the entity awarded to all SDB, women-owned small businesses, HUBZone small businesses, veteran-owned and service-disabled veteran-owned small businesses, Historically Black Colleges, and Universities, minority institutions of higher education and nonprofit agencies employing people who are blind and severely disabled under NASA contracts and other Federal agency contracts during the two preceding fiscal years. If the entity is presently required to submit a Summary Subcontracting Report via the Government Electronic Subcontracting Reporting System (eSRS), the application must include

copies of the final reports for the two preceding fiscal years.

(8) Information on the entity's ability to provide developmental assistance to its eligible protégés.

(9) Any additional information as requested by NASA OSBP.

(c) In accordance with the Small Business Act, developmental assistance as described in 1819.7205(c) and provided by a mentor to its protégé pursuant to a mentor-protégé agreement may not be a basis for determining affiliation or control (either direct or indirect) between the parties.

(d) Entities that apply for participation and are not approved will be provided the reasons and an opportunity to submit additional information for reconsideration.

(e) Entities approved for participation as a mentor in the NASA program must resubmit a mentor application every six (6) years for review and approval by NASA OSBP.

(f) A template of the mentor application is available at: *http://www.osbp.nasa.gov*.

1819.7204 Protégé selection.

(a) Mentors will be solely responsible for selecting protégés. Mentors are required to identify and select concerns that are defined as an SDB, women-owned small business, HUBZone small business, veteran-owned or service-disabled veteran-owned small business, Historically Black Colleges and Universities, minority institutions of higher education, an active NASA SBIR Phase II company or a nonprofit agency employing the blind or severely disabled.

(b) The selection of protégés by a mentor may not be protested, except as in paragraph (c) of this section.

(c) In the event of a protest regarding the size or eligibility of an entity selected to be a protégé, the mentor must refer the protest to the SBA to resolve in accordance with 13 CFR part 121 (with respect to size) or 13 CFR part 124 (with respect to disadvantaged status).

(d) A protégé may have only one active NASA mentor-protégé agreement, and may not participate in the NASA Program more than two times as a protégé.

(e) Protégés will be required to submit a protégé application concurrently with the agreement submission. This application will include the following information:

(1) A summary of the entity's historical and recent activities, including annual revenue and number of employees.

(2) The total dollar amount of NASA contracts and subcontracts that the entity received during the two preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(3) The total dollar amount of all other Federal agency contracts and subcontracts that the company received during the two preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(4) The total dollar amount of subcontracts that the company awarded under NASA contracts during the two preceding fiscal years.

(5) The total dollar amount of subcontracts that the company awarded under all other Federal agency contracts during the two preceding fiscal years.

1819.7205 Mentor-protégé agreements.

(a) The agreements shall be structured after the mentor completes an assessment of the developmental needs of the protégé and a mutual agreement is reached regarding the developmental assistance to be permitted to address those needs and enhance the protégé's ability to perform successfully under contracts and/or subcontracts.

(b) A mentor shall not require a protégé to enter into a mentor-protégé agreement as a condition for award of a contract by the mentor, including a subcontract under a NASA contract awarded to the mentor.

(c) The mentor-protégé agreement may provide for the mentor to furnish any or all of the following types of developmental assistance:

(1) Assistance by the mentor's personnel in—

(i) General business management, including organizational management, financial management, personnel management, marketing, business development, and overall business planning;

(ii) Engineering, environmental and technical matters; and

(iii) Any other assistance designed to develop the capabilities of the protégé under the developmental program.

(2) Award of subcontracts under NASA contracts or other contracts on a noncompetitive basis.

(3) Advance payments under such subcontracts. The mentor must administer advance payments when first approved by NASA in accordance with FAR Subpart 32.4, Advance Payments for Non-Commercial Items.

(4) Loans.

(5) Investment(s) in the protégé in exchange for an ownership interest in the protégé, not to exceed 10 percent of the total ownership interest. Investments may include, but are not limited to, cash, stock, and contributions in kind.

(6) Assistance that the mentor obtains for the protégé from one or more of the following:

(i) Small Business Development Centers established pursuant to Section 21 of the Small Business Act (15 U.S.C. 648).

(ii) Entities providing procurement technical assistance pursuant to 10 U.S.C. Chapter 142 (Procurement Technical Assistance Centers).

(iii) Historically Black Colleges and Universities.

(iv) Minority institutions of higher education.

(d) Developmental assistance provided under an approved mentor-protégé agreement is distinct from, and must not duplicate, any effort that is the normal and expected product of the award and administration of the mentor's subcontracts. Costs associated with the latter must be accumulated and charged in accordance with the contractor's approved accounting practices; they are not considered developmental assistance costs eligible for credit under the Program.

(e) A template of the mentor-protégé agreement is available at *http://www.osbp.nasa.gov*.

1819.7206 Agreement contents.

Each mentor-protégé agreement will contain the following elements:

(a) The name, address, e-mail address, and telephone number of the mentor and protégé points of contact;

(b) The NAICS code(s) that represent the contemplated supplies or services to be provided by the protégé to the mentor and a statement that, at the time the agreement is submitted for approval, the protégé, if an SDB, a women-owned small business, a HUBZone small business, or a veteran-owned, a service-disabled veteran-owned small business concern or a NASA SBIR Phase II Company, does not exceed the size standard for the appropriate NAICS code;

(c) The DUNS number of the mentor and protégé;

(d) A statement that the mentor is eligible to participate in accordance with 1819.7202(a);

(e) A statement that the protégé is eligible to participate in accordance with 1819.7202(b);

(f) A developmental program specifying the type of assistance the mentor will provide to the protégé and how that assistance will—

(1) Increase the protégé's ability to participate in NASA, Federal, and/or commercial contracts and subcontracts; and

(2) Increase small business subcontracting opportunities in industry categories where eligible protégés or other small business firms are not dominant in the company's vendor base;

(g) Factors to assess the protégé's developmental progress under the Program, including specific milestones for providing each element of the identified assistance;

(h) An estimate of the dollar value and type of subcontracts that the mentor will award to the protégé, and the period of time over which the subcontracts will be awarded;

(i) A statement from the mentor and protégé indicating a commitment to comply with the requirements for reporting in accordance with 1819.7212 and for review of the agreement during the duration of the agreement, and additionally for the protégé, two years thereafter;

(j) Procedures to terminate the agreement in accordance with 1819.7210;

(k) A provision that the term for the agreement will not exceed 3 years for a credit agreement;

(l) Additional terms and conditions as may be agreed upon by both parties; and

(m) Signatures and dates for both parties to the mentor-protégé agreement.

1819.7207 Agreement submission and approval process.

(a) To participate in the Program, entities approved as mentors in accordance with 1819.7203, will submit to a Small Business Specialist at a NASA Center—

(1) A signed mentor-protégé agreement pursuant to 1819.7206;

(2) The estimated cost of the technical assistance to be provided, broken out per year and per task, in a separate cost volume; and

(3) NASA OSBP may require additional information as requested upon agreement submission.

(b) The mentor-protégé agreement must be approved by the Assistant Administrator, NASA OSBP, prior to the mentor incurring eligible costs for developmental assistance provided to the protégé.

(c) The cognizant NASA center will issue a contract modification, if justified prior to the mentor incurring costs for developmental assistance to the protégé.

1819.7208 Award Fee Pilot Program.

(a) Mentors will be eligible to earn a separate award fee associated with the provision of developmental assistance to NASA SBIR Phase II Protégés only. The award fee will be assessed at the end of the Mentor-Protégé agreement period.

(b) The overall developmental assistance performance of NASA contractors, in promoting the use of small businesses as subcontractors, will be a required evaluation factor in award fee plans.

(c) Evaluation criteria to determine the award fee would include:

(1) Active participation in the Program;

(2) The amount and quality of developmental assistance provided;

(3) Subcontracts awarded to small businesses and others;

(4) Success of the protégés in increasing their business as a result of receiving developmental assistance; and

(5) Accomplishment of any other activity as related to the mentor-protégé relationship.

(d) The Award Fee Pilot Program is an addition to the credit agreement. Participants that are eligible for award fee will also receive credit as described in 1819.7209.

1819.7209 Credit agreements.

(a) The credit permits the mentor to include the cost it expends on a mentor-protégé agreement as part of any subcontracting plan pursuant to the clause at FAR 52.219–9, Small Business Subcontracting Plan. The following provisions apply to all credit mentor-protégé agreements:

(1) Developmental assistance costs incurred by a mentor for providing assistance to a protégé pursuant to an approved credit mentor-protégé agreement may be credited as if the costs were incurred in a subcontract awarded to that protégé. Credit is given for the sole purpose of determining the performance of the mentor in attaining an applicable subcontracting goal established under any contract containing a subcontracting plan pursuant to the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(2) Other costs that have been reimbursed through inclusion in indirect expense pools may also be credited as subcontract awards for determining the performance of the mentor in attaining an applicable subcontracting goal established under any contract containing a subcontracting plan.

(3) The amount of credit a mentor may receive for developmental assistance costs must be reported on a one-to-one basis for all dollars spent.

1819.7210 Agreement terminations.

(a) Agreements may be terminated for cause or on a voluntary basis by the mentor or the protégé. The procedures for agreement termination are outlined in the mentor-protégé agreement template available at *http://www.osbp.nasa.gov*.

(b) NASA OSBP maintains the right to terminate an agreement if milestones provided under the original agreement submission, pursuant to 1819.7206(g), are not satisfactorily

achieved, or for other reasons as determined necessary by the NASA OSBP.

1819.7211 Loss of eligibility.

(a) If the mentor is suspended or debarred while performing under an approved mentor-protégé agreement, the mentor—

(1) May not be reimbursed or take credit for any costs of providing developmental assistance to its protégé, incurred more than 30 days after the imposition of such suspension or debarment; and

(2) Must promptly give notice of its suspension or debarment to its protégé and NASA OSBP.

(b) If the protégé is suspended or debarred while performing under an approved mentor-protégé agreement or the SBA determines that a protégé is ineligible according to program eligibility requirements, then—

(1) The mentor shall not be able to receive credit for any of the costs of providing assistance to the protégé after the date of the determination regarding the protégé's loss of eligibility; and

(2) The mentor shall not be eligible to receive an award fee for the assistance provided to the protégé after the date of the determination regarding the protégé's suspension or debarment, if participating in the Award Fee Pilot Program.

(c) If the protégé is a Historically Black College or University, or other minority institution of higher education that loses either their accredited or minority status, then:

(1) The mentor shall not be able to receive credit for any the costs of providing assistance to the protégé after the date of the determination regarding the protégé's status.

(2) The mentor shall not be eligible to receive an award fee for the assistance provided to the protégé after the date of the determination regarding the protégé's loss of accreditation or minority status.

1819.7212 Reporting requirements.

(a) Mentors must report on the progress made under active mentor-protégé agreements semiannually throughout the term of the agreement.

(b) Reports are due 30 days after the end of each six-month period of performance commencing with the start of the agreement.

(c) Each semiannual report must include the following data on performance under the mentor-protégé agreement:

(1) Expenditures by the mentor.

(2) The number and dollar value of subcontracts awarded to the protégé.

(3) Description of developmental assistance provided, including milestones achieved.

(4) Impact of the agreement in terms of capabilities enhanced, certifications received, and/or technology transferred.

(d) Semiannually, the protégé must provide an independently developed progress report using the semiannual report template, on the progress made during the prior six months by the protégé in employment, revenues, and participation in NASA contracts during each year of the Program participation term. The Protégé must also provide an additional post-agreement report for each of the two years following the expiration of the Program participation term.

(e) The protégé semiannual report required by paragraph (d) of this section may be provided with the mentor semiannual report required by paragraph (a) of this section, or submitted separately.

(f) Reports for all agreements must be submitted to the NASA OSBP Mentor-Protégé Program Manager, the mentor's cognizant administrative contracting officer, and their cognizant center small business specialist.

(g) Templates for the semiannual report and the Post-Agreement report and guidance for their submission are available at: *http://www.osbp.nasa.gov*.

1819.7213 Performance reviews.

(a) NASA OSBP will conduct annual performance reviews of the progress and accomplishments realized under approved mentor-protégé agreements. These reviews will include verification of—

(1) All costs incurred by the mentor under the agreement to determine if they were reasonable in the provision of developmental assistance to the

protégé in accordance with the mentor-protégé agreement and applicable regulations and procedures; and

(2) The mentor's and protégé's reported progress made by the protégé in employment, revenues, and participation in NASA contracts during the program participation term.

1819.7214 Measurement of program success.

(a) NASA will measure the overall success of the Program by the extent to which the Program results in—

(1) An increase in the number and dollar value of contracts and subcontract awards to protégés (under NASA contracts, contracts awarded by other Federal agencies, and commercial contracts) from the date of their entry into the program until two years after the conclusion of the agreement;

(2) An increase in the number and dollar value of subcontracts awarded to a protégé (or former protégé) by its mentor (or former mentor); and

(3) An increase in the protégé's number of employees from the date of entry into the program until two years after the completion of the agreement.

1819.7215 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 1852.219–77, NASA Mentor-Protégé Program, in:

(1) Any contract that includes the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(b) The contracting officer shall insert the clause at 1852.219–79, Mentor Requirements and Evaluation, in contracts where the prime contractor is a participant in the NASA Mentor-Protégé Program.

Subpart 1819.73—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs

1819.7301 Scope of subpart.

The Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs were established and issued under the authority of the Small Business Act codified at 15 U.S.C. 631, as amended, and the Small Business Innovation Development Act of 1982 (Pub. L. 97–219), codified with amendments at 15 U.S.C. 638. The Small Business Act requires that the Small Business Administration (SBA) issue SBIR and STTR Program Policy Directives for the general conduct of the SBIR/STTR Programs within the Federal Government. The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns (SBCs) in federally-funded research or research and development (R/R&D). Specific program purposes are to: Stimulate technological innovation; use small business to meet Federal R/R&D needs; foster and encourage participation by socially and economically disadvantaged SBCs, and by SBCs that are 51-percent owned and controlled by women, in technological innovation; and increase private sector commercialization of innovations derived from Federal R/R&D, thereby increasing competition, productivity and economic growth. Federal agencies participating in the SBIR/STTR Programs (SBIR/STTR agencies) are obligated to follow the guidance provided by the SBA Policy Directive. NASA is required to ensure its policies, regulations, and guidance on the SBIR/STTR Programs are consistent with SBA's Policy Directive. Contracting officers are required to insert the applicable clauses identified in 1819.7302 in all SBIR and STTR contracts.

[71 FR 61688, Oct. 19, 2006]

1819.7302 NASA contract clauses.

(a) Contracting officers shall insert the clause at 1852.219–80, Limitation on Subcontracting—SBIR Phase I Program, in all Phase I contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97–219 (the Small Business Innovation Development Act of 1982).

(b) Contracting officers shall insert the clause at 1852.219–81, Limitation on Subcontracting—SBIR Phase II Program, in all Phase II contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97–219 (the

Small Business Innovation Development Act of 1982).

(c) Contracting officers shall insert the clause at 1852.219–82, Limitation on Subcontracting—STTR Program, in all contracts awarded under the Small Business Technology Transfer (STTR) Program established pursuant to Public Law 97–219 (the Small Business Innovation Development Act of 1982).

(d) Contracting officers shall insert the clause at 1852.219–83, Limitation of the Principal Investigator—SBIR Program, in all contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97–219 (the Small Business Innovation Development Act of 1982).

(e) Contracting officers shall insert the clause at 1852.219–84, Limitation of the Principal Investigator—STTR Program, in all contracts awarded under the Small Business Technology Transfer (STTR) Program established pursuant to Public Law 97–219 (the Small Business Innovation Development Act of 1982).

(f) Contracting officers shall insert the clause at 1852.219–85, Conditions for Final Payment—SBIR and STTR Contracts, in all contracts awarded under the Small Business Technology Transfer (STTR) Program and in all Phase I and Phase II contracts awarded under the Small Business Technology Transfer (STTR) Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97–219 (the Small Business Innovation Development Act of 1982).

[71 FR 61688, Oct. 19, 2006]

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55755, Oct. 29, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1822 appear at 66 FR 53547, Oct. 23, 2001.

Subpart 1822.1—Basic Labor Policies

1822.103–5 Contract clause.

Insert the clause at 52.222–1, Notice to the Government of Labor Disputes, in all solicitations and contracts that exceed the simplified acquisition threshold.

[69 FR 21765, Apr. 22, 2004]

PART 1823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 1823.2—Energy and Water Efficiency and Renewable Energy

Sec.
1823.271 NASA Solicitation provision and contract clause.

Subpart 1823.5—Drug-Free Workplace

1823.570 Drug- and alcohol-free workforce.
1823.570–1 Definitions.
1823.570–2 Contract clause.
1823.570–3 Suspension of payments, termination of contract, and debarment and suspension actions.

Subpart 1823.10—Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements

1823.1005 Contract clause.

Subpart 1823.70—Safety and Health

1823.7001 NASA solicitation provisions and contract clauses.

Subpart 1823.71—Frequency Authorization

1823.7101 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 61 FR 55757, Oct. 29, 1996, unless otherwise noted.

Subpart 1823.2—Energy and Water Efficiency and Renewable Energy

1823.271 NASA Solicitation provision and contract clause.

Insert the clause at 1852.223–76, Federal Automotive Statistical Tool Reporting, in solicitations and contracts

requiring contractor operation of Government-owned or -leased motor vehicles, including, but not limited to, interagency fleet management system (IFMS) vehicles authorized in accordance with FAR 51.2.

[68 FR 43334, July 22, 2003]

Subpart 1823.5—Drug-Free Workplace

1823.570 Drug- and alcohol-free workforce.

This section sets sets forth NASA requirements for mandatory drug and alcohol testing of certain contractor personnel under section 203, National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473, 72 Stat. 429; and Civil Space Employee Testing Act of 1991, Public Law 102–195, sec. 21, 105 Stat. 1616 to 1619.

[61 FR 55757, Oct. 29, 1996. Redesignated and amended at 69 FR 21765, Apr. 22, 2004]

1823.570–1 Definitions.

As used in this subpart *employee* and *controlled substance* are as defined in FAR 23.503. The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements of 1823.570 through 1823.570–3 and the clause at 1852.223–74.

Employee in a sensitive position means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence; and includes any employee performing in a position designated ''mission critical'' pursuant to the clause at 1852.246–70. The term also includes any applicant who is interviewed for a position described in this paragraph.

Use, in violation of applicable law or Federal regulation, of alcohol includes having, while on duty or during a preemployment interview, an alcohol concentration of 0.04 percent by weight or more in the blood, as measured by chemical test of the individual's breath or blood. An individual's refusal to submit to such test is presumptive evidence of use, in violation of applicable law or Federal regulation, of alcohol.

[61 FR 55757, Oct. 29, 1996. Redesignated and amended at 69 FR 21765, Apr. 22, 2004]

1823.570–2 Contract clause.

The contracting officer shall insert the clause at 1852.223–74, ''Drug- and Alcohol-Free Workforce,'' in all solicitations and contracts containing the clause at 1852.246–70, ''Mission Critical Space Systems Personnel Reliability Program,'' and in other solicitations and contracts exceeding $5 million in which work is performed by an employee in a sensitive position. However, the contracting officer shall not insert the clause at 1852.223–74 in solicitations and contracts for commercial items (see FAR parts 2 and 12).

[61 FR 55757, Oct. 29, 1996. Redesignated at 69 FR 21765, Apr. 22, 2004]

1823.570–3 Suspension of payments, termination of contract, and debarment and suspension actions.

The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and debarment and suspension of a contractor relative to failure to comply with the clause at 1852.223–74. Causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are the following:

(a) The contractor fails to comply with paragraph (b), (c), or (d) of the clause at 1852.223–74; or

(b) Such a number of contractor employees in sensitive positions having been convicted of violations of criminal drug statutes or substantial evidence of drug or alcohol abuse or misuse occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug- and alcohol-free workforce.

[61 FR 55757, Oct. 29, 1996. Redesignated and amended at 69 FR 21765, Apr. 22, 2004]

Subpart 1823.10—Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements

1823.1005 Contract clause.

(b) Use the clause with its Alternate I if the contract provides for contractor (1) Operation or maintenance of a NASA facility at which NASA has implemented or plans to implement an EMS, including, but not limited to the Jet Propulsion Laboratory and Michoud Assembly Facility; or

(2) Activities and operations—

(ii) The contracting officer and the procurement request initiator shall determine whether the contractor's activities or operations are covered within the EMS, in cooperation with the facility's environmental office, and in accordance with NPR 8553.1, ''NASA Environmental Management System (EMS)'' paragraph 1.2.c, and the local EMS documented procedures.

(c) Use the clause with its Alternate II whenever Alternate I is used.

[68 FR 62023, Oct. 31, 2003, as amended at 69 FR 63459, Nov. 2, 2004]

Subpart 1823.70—Safety and Health

1823.7001 NASA solicitation provisions and contract clauses.

(a) The clause at 1852.223–70, Safety and Health, shall be included in all solicitations and contracts when one or more of the following conditions exist:

(1) The work will be conducted completely or partly on premises owned or controlled by the Government.

(2) The work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold.

(3) The work, regardless of place of performance, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable).

(4) When the assessed risk and consequences of a failure to properly manage and control the hazard(s) warrants use of the clause.

(b) The clause prescribed in paragraph (a) of this section may be excluded, regardless of place of performance, when the contracting officer, with the approval of the installation official(s) responsible for matters of safety and occupational health, determines that the application of OSHA and DOT regulations constitutes adequate safety and occupational health protection.

(c) The contracting officer shall insert the provision at 1852.223–73, Safety and Health Plan, in solicitations containing the provision at 1852.223–70. This provision may be modified to identify specific information that is to be included in the plan. After receiving the concurrence of the center safety and occupational health official(s), the contracting officer shall include the plan in any resulting contract. Insert the provision with its Alternate I, in Invitations for Bid containing the clause at 1852.223–70.

(d)(1) The contracting officer shall insert the clause at 1852.223–75, Major Breach of Safety or Security, in all solicitations and contracts with estimated values of $500,000 or more, unless waived at a level above the contracting officer with the concurrence of the project manager and the installation official(s) responsible for matters of security, export control, safety, and occupational health.

(2) Insert the clause with its Alternate I if—

(i) The solicitation or contract is with an educational or other nonprofit institution and contains the termination clause at FAR 52.249–5; or

(ii) The solicitation or contract is for commercial items and contains the clause at FAR 52.212–4.

(3) For contracts with estimated values below $500,000, use of the clause is optional.

(e) For all solicitations and contracts exceeding the micro-purchase threshold that do not include the clause at 1852.223–70, Safety and Health, the contracting officer shall insert the clause

at 1852.223–72, Safety and Health (Short Form).

[65 FR 37059, June 13, 2000, as amended at 65 FR 70316, Nov. 22, 2000; 66 FR 18052, Apr. 5, 2001; 66 FR 48361, Sept. 20, 2001; 67 FR 17016, Apr. 9, 2002; 71 FR 8989, Feb. 22, 2006]

Subpart 1823.71—Frequency Authorization

1823.7101 Contract clause.

The contracting officer shall insert the clause at 1852.223–71, Frequency Authorization, in solicitations and contracts calling for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required.

PART 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1824.1—Protection of Individual Privacy

Sec.
1824.102 General.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55758, Oct. 29, 1996, unless otherwise noted.

Subpart 1824.1—Protection of Individual Privacy

1824.102 General.

(1) For NASA rules and regulations implementing the Privacy Act, see Privacy—NASA Regulations, (14 CFR 1212). The Act applies to any contractor maintaining a system of records to accomplish a NASA mission.

(2) Systems of records to which the Privacy Act does not apply include—

(i) Records maintained by a contractor on individuals employed by the contractor on its own behalf for the purpose of providing supplies and services to the Federal Government; and

(ii) Records that—

(A) Are maintained under contracts with educational institutions to provide training;

(B) Are generated on students working under the contract relative to their attendance (admission forms, grade reports, etc.);

(C) Are similar to those maintained on other students; and

(D) Are commingled with their records on other students.

PART 1825—FOREIGN ACQUISITION

Sec.
1825.003 Definitions.
1825.003–70 NASA definitions.

Subpart 1825.1—Buy American Act—Supplies

1825.103 Exceptions.

Subpart 1825.4—Trade Agreements

1825.400 Scope of subpart.

Subpart 1825.9—Customs and Duties

1825.901 Policy.

Subpart 1825.11—Solicitation Provisions and Contract Clauses

1825.1101 Acquisition of supplies.
1825.1103 Other provisions and clauses.
1825.1103–70 Export control.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 65 FR 10031, Feb. 25, 2000, unless otherwise noted.

1825.003 Definitions.

1825.003–70 NASA definitions.

''Canadian end product'', for an item with an estimated value of $25,000 or less, means an unmanufactured end product mined or produced in Canada or an end product manufactured in Canada, if the cost of its components mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product. For an end product with an estimated value in excess of $25,000, the definition at FAR 25.003 applies.

Subpart 1825.1—Buy American Act—Supplies

1825.103 Exceptions.

(a)(i) The Assistant Administrator for Procurement has determined that

it is inconsistent with the public interest to apply restrictions of the Buy American Act to Canadian end products with estimated values of $25,000 or less as defined in 1825.003–70. Accordingly, contracting officers must evaluate all offers for such Canadian end products on a parity with offers for domestic end products, except that applicable duty (whether or not a duty free entry certificate may be issued) must be included in evaluating offers for Canadian end products.

(ii) The Assistant Administrator for Procurement has determined that for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made end products that are substantially transformed in the United States.

[65 FR 10031, Feb. 25, 2000, as amended at 68 FR 11748, Mar. 12, 2003; 69 FR 21765, Apr. 22, 2004]

Subpart 1825.4—Trade Agreements

1825.400 Scope of subpart.

(b) The Buy American Act applies to all acquisitions of Japanese end products or services in excess of $3,000.

[65 FR 10031, Feb. 25, 2000, as amended at 67 FR 50824, Aug. 6, 2002; 71 FR 71073, Dec. 8, 2006]

Subpart 1825.9—Customs and Duties

1825.901 Policy.

NASA has statutory authority to exempt certain articles from import duties, including articles that will be launched into space, spare parts for such articles, ground support equipment, and unique equipment used in connection with an international program or launch service agreement. This authority is fully described in 14 CFR part 1217.

Subpart 1825.11—Solicitation Provisions and Contract Clauses

1825.1101 Acquisition of supplies.

(c)(1) NASA has determined that the restrictions of the Buy American Act are not applicable to U.S.-made end products.

(e) The contracting officer must add paragraph (k) as set forth in 1852.225–8, Duty-Free Entry of Space Articles, in solicitations and contracts when the supplies that will be accorded duty-free entry are identifiable before award. Insert the supplies determined in accordance with FAR subpart 25.9 and 1825.903.

[65 FR 10031, Feb. 25, 2000, as amended at 68 FR 11748, Mar. 12, 2003]

1825.1103 Other provisions and clauses.

1825.1103–70 Export control.

(a) *Background.* (1) NASA contractors and subcontractors are subject to U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR parts 730 through 799. The contractor is responsible for obtaining the appropriate licenses or other approvals from the Department of State or the Department of Commerce when it exports hardware, technical data, or software, or provides technical assistance to a foreign destination or ''foreign person'', as defined in 22 CFR 120.16, and there are no applicable or available exemptions/exceptions to the ITAR/EAR, respectively. A person who is lawfully admitted for permanent residence in the United States is not a ''foreign person''. (See 22 CFR 120.16 and 15 CFR 734.2(b)(2)(ii))

(2) The exemption at 22 CFR 125.4(b)(3) of the ITAR provides that a contractor may export technical data without a license if the contract between the agency and the exporter provides for the export of the data. The clause at 1852.225–70, Alternate I, provides contractual authority for the exemption, but the exemption is available only after the contracting officer, or designated representative, provides

written authorization or direction enabling its use. It is NASA policy that the exemption at 22 CFR 125.4(b)(3) may only be used when technical data (including software) is exchanged with a NASA foreign partner pursuant to the terms of an international agreement in furtherance of an international collaborative effort. The contracting officer must obtain the approval of the Center Export Administrator before granting the contractor the authority to use this exemption.

(b) *Contract clause.* Insert the clause at 1852.225–70, Export Licenses, in all solicitations and contracts, except in contracts with foreign entities. Insert the clause with its Alternate I when the NASA project office indicates that technical data (including software) is to be exchanged by the contractor with a NASA foreign partner pursuant to an international agreement.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1827—PATENTS, DATA, AND COPYRIGHTS

Sec.
1827.000 Scope of part.

Subpart 1827.3—Patent Rights Under Government Contracts

1827.301 Definitions.
1827.302 Policy.
1827.303 Contract clauses.
1827.303–70 NASA solicitation provisions and contract clauses.
1827.304 Procedures.
1827.304–1 General.
1827.304–2 Contracts placed by or for other Government agencies.
1827.304–3 Contracts for construction work or architect-engineer services.
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1827.304–5 Appeals.
1827.305 Administration of the patent rights clauses.
1827.305–4 Conveyance of invention rights acquired by the Government.

Subpart 1827.4—Rights in Data and Copyrights

1827.404 Basic rights in data clause.
1827.409 Solicitation provisions and contract clauses.
1827.409–70 NASA contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 36715, July 9, 1997, unless otherwise noted.

1827.000 Scope of part.

This part prescribes NASA policies, procedures, and clauses pertaining to patents, data, and copyrights. The provisions of FAR part 27 apply to NASA acquisitions unless specifically excepted in this part.

Subpart 1827.3—Patent Rights Under Government Contracts

1827.301 Definitions.

Administrator, as used in this subpart, means the Administrator of NASA or a duly authorized representative.

Contract, as used in this subpart, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

Made, in lieu of the definition in FAR 27.301, as used in this subpart, means conceived or first actually reduced to practice; provided that in the case of a variety of plant, the date of determination (as defined in Section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

Reportable item, as used in this subpart, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectible under Title 17 of the United States Code.

Subject invention, in lieu of the definition in FAR 27.301, as used in this subpart, means any reportable item that is or may be patentable or otherwise protectible under Title 35 of the United States Code, or any novel variety of plant that is or may be protectible under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

[62 FR 36715, July 9, 1997, as amended at 62 FR 58688, Oct. 30, 1997; 63 FR 63209, Nov. 12, 1998]

1827.302 Policy. (NASA supplements paragraphs (a), (b), (c), (d), (e), (f), (g), and (i)).

(a) *Introduction*. (i) NASA policy with respect to any invention, discovery, improvement, or innovation made in the performance of work under any

NASA contract or subcontract with other than a small business firm or a nonprofit organization and the allocation to related property rights is based upon Section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457) (the Act); and, to the extent consistent with this statute, the Presidential Memorandum or Government Patent Policy to the Heads of Executive Departments and Agencies, dated February 18, 1983, and Section 1(d)(4) of Executive Order 12591. NASA policy with respect to any invention made in the performance of experimental, developmental, or research work with a small business firm or a nonprofit organization is based on 35 U.S.C. Chapter 18, as amended.

(ii) NASA contracts subject to Section 305 of the Act shall ensure the prompt reporting of reportable items in other to protect the Government's interest and to provide widest practicable and appropriate dissemination, early utilization, expeditious development, and continued availability for the benefit of the scientific, industrial, and commercial communities and the general public.

(b) *Contractor right to elect title.* (i) For NASA contracts, the contractor right to elect title only applies to contracts with small businesses and nonprofit organizations. For other business entities, see subdivision (ii) of this paragraph.

(ii) Contractor right to request a waiver of title. For NASA contracts with other than a small business firm or a nonprofit organization (contracts subject to Section 305 of the Act), it is the policy of NASA to waive the rights (to acquire title) of the United States (with the reservation of a Government license set forth in FAR 27.302(c) and the march-in rights of FAR 27.302(f) and 1827.302(f)) in and to any subject invention if the Administrator determines that the interests of the United States will be served. This policy, as well as the procedures and instructions for such waiver of rights, is stated in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1. Waiver may be requested in advance of contract award for any or all of the subject inventions, or for individually identified subject inventions reported under the contract. When waiver of rights is granted, the contractor's right to title, the rights reserved by the Government, and other conditions and obligations of the waiver shall be included in an Instrument of Waiver executed by NASA and the party receiving the waiver.

(iii) It is also a policy of NASA to consider for a monetary award, when referred to the NASA Inventions and Contributions Board, any subject invention reported to NASA in accordance with this subpart, and for which an application for patent has been filed.

(c) *Government license.* For each subject invention made in the performance of work under a NASA contract with other than a small business firm or nonprofit organization and for which waiver of rights has been granted in accordance with 14 CFR Section 1245, Subpart 1, the Administrator shall reserve an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign Government in accordance with any treaty or agreement of the United States.

(d) *Government right to receive title.* Under any NASA contract with other than a small business or nonprofit organization (i.e., those contracts subject to Section 305(a) of the Act), title to subject inventions vests in NASA when the determinations of Section 305(a)(1) or 305(a)(2) have been made. The Administrator may grant a waiver of title in accordance with 14 CFR Section 1245.

(e) *Utilization reports.* For any NASA contract with other than a small business firm or a nonprofit organization, the requirements for utilization reports shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, and any Instrument of Waiver executed under those Regulations.

(f) *March-in rights.* For any NASA contract with other than a small business firm or a nonprofit organization, the march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, and any Instrument of Waiver executed under those Regulations.

(g) *Preference for United States industry*. Waiver of the requirement for the agreement for any NASA contract with other than a small business firm or a nonprofit organization shall be in accordance with the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

(i) *Minimum rights to contractor*. (1) For NASA contracts with other than a small business firm or a nonprofit organization (i.e., those contracts subject to Section 305(a) of the Act), where title to any subject inventions vests in NASA, the contractor is normally granted, in accordance with 14 CFR 1245, a revocable, nonexclusive, royalty-free license in each patent application filed in any country and in any resulting patent. The license extends to any of the contractor's domestic subsidiaries and affiliates within the corporate structure, and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license and right are transferable only with the approval of the Administrator, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The Administrator is the approval authority for revoking or modifying a license. The procedures for revocation or modification are described in 37 CFR 404.10 and 14 CFR 1245.108.

1827.303 Contract clauses. (NASA supplements paragraphs (a), (b), (c) and (d))

(a)(1)(A) See 1827.303–70(a).

(B) To qualify for the clause at FAR 52.227–11, a prospective contractor may be required to represent itself as either a small business firm or a nonprofit organization. If there is reason to question the status of the prospective contractor, the contracting officer may file a protest in accordance with FAR 19.302 if small business firm status is questioned, or require the prospective contractor to furnish evidence of its status as nonprofit organization.

(5) Alternate IV to 52.227–11 is not used in NASA contracts. See instead 1827.303–70(a).

(b)(1)(ii) FAR 52.227–12 is not used in NASA contracts. See instead 1827.303–70(b).

(c)(1)(ii) When work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not domestic firms, see 1827.303–70(f).

(2) See 1827.303–70 (b) and (f).

(d)(1) When one of the conditions in FAR 27.303(d)(1) (i) through (iv) is met, the contracting officer shall consult with the installation intellectual property counsel to determine the appropriate clause.

[62 FR 36715, July 9, 1997, as amended at 64 FR 36606, July 7, 1999]

1827.303–70 NASA solicitation provisions and contract clauses.

(a) When the clause at FAR 52.227–11 is included in a solicitation or contract, it shall be modified as set forth at 1852.227–11.

(b) The contracting officer shall insert the clause at 1852.227–70, New Technology, in all NASA solicitations and contracts with other than a small business firm or a nonprofit organization (i.e., those subject to section 305(a) of the Act), if the contract is to be performed in the United States, its possessions, or Puerto Rico and has as a purpose the performance of experimental, developmental, research, design, or engineering work. Contracts for any of the following purposes may be considered to involve the performance of work of the type described above (these examples are illustrative and not limiting):

(1) Conduct of basic or applied research.

(2) Development, design, or manufacture for the first time of any machine, article of manufacture, or composition of matter to satisfy NASA's specifications or special requirements.

(3) Development of any process or technique for attaining a NASA objective not readily attainable through the practice of a previously developed process or technique.

(4) Testing of, evaluation of, or experimentation with a machine, process, concept, or technique to determine whether it is suitable or could be made suitable for a NASA objective.

(5) Construction work or architect-engineer services having as a purpose the performance of experimental, developmental, or research work or test and evaluation studies involving such work.

(6) The operation of facilities or the coordination and direction of the work of others, if these activities involve performing work of any of the types described in paragraphs (b)(1) through (5) of this section.

(c) The contracting officer shall insert the provision at 1852.227–71, Requests for Waiver of Rights to Inventions, in all solicitations that include the clause at 1852.227–70, New Technology (see paragraph (b) of this section).

(d) The contracting officer shall insert the clause at 1852.227–72, Designation of New Technology Representative and Patent Representative, in all solicitations and contracts containing either of the clauses at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form) or 1852.227–70, New Technology (see paragraph (c) of this section). It may also be inserted, upon consultation with the installation intellectual property counsel, in solicitations and contracts using another patent rights clause. The New Technology Representative shall be the Technology Utilization Officer or the Staff member (by titled position) having cognizance of technology utilization matters for the installation concerned. The Patent Representative shall be the intellectual property counsel (by titled position) having cognizance of patent matters for the installation concerned.

(e) The contracting officer shall insert the provision at 1852.227–84, Patent Rights Clauses, in solicitations for experimental, developmental, or research work to be performed in the United States, its possessions, or Puerto Rico when the eventual awardee may be a small business or a nonprofit organization.

(f) As authorized in FAR 27.303(c)(2), when work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not domestic firms, the clause at 1852.227–85, Invention Reporting and Rights—Foreign, shall be used unless the contracting officer determines, with concurrence of the installation intellectual property counsel, that the objectives of the contract would be better served by use of the clause at FAR 52.227–13, Patent Rights—Acquisition by the Government. For this purpose, the contracting officer may presume that a contractor is not a domestic firm unless it is known that the firm is not foreign owned, controlled, or influenced. (See FAR 27.304–4(a) regarding subcontracts with U.S. firms.)

[62 FR 36715, July 9, 1997, as amended at 62 FR 58688, Oct. 30, 1997]

1827.304 Procedures.

1827.304–1 General. (NASA supplements paragraphs (a), (b), (c), (f), (g), and (h))

(a) *Contractor appeals of exceptions.* In any contract with other than a small business firm or nonprofit organization, the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, shall apply.

(b) *Greater rights determinations.* In any contract with other than a small business firm or a nonprofit organization and with respect to which advance waiver of rights has not been granted (see 1827.302(b)), the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request waiver of title to an individual identified subject invention pursuant to the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

(c) *Retention of rights by inventor.* The NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, apply for any invention made in the performance of work under any contract with other than a small business firm or a nonprofit organization.

(f) *Revocation or modification of contractor's minimum rights.* Revocation or modification of the contractor's license rights (see 1827.302–(i)(2)) shall be in accordance with 37 CFR 404.10, for subject inventions made and reported under any contract with other than a small business firm or a nonprofit organization.

(g) *Exercise of march-in rights.* For contracts with other than a small business firm or a nonprofit organization,

the procedures for the exercise of march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

(h) *Licenses and assignments under contracts with nonprofit organizations.* The Headquarters Associate General Counsel (Intellectual Property) (Code GP) is the approval authority for assignments. Contractor requests should be made to the Patent Representative designated in the clause at 1852.227–72 and forwarded, with recommendation, to Code GP for approval.

1827.304–2 Contracts placed by or for other Government agencies. (NASA supplements paragraph (a))

(a)(3) When a contract is placed for another agency and the agency does not request the use of a specific patent rights clause, the contracting officer, upon consultation with the installation intellectual property counsel, may use the clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form) as modified by 1852.227–11 (see 1827.303–70(a)) or 1852.227–70, New Technology (see 1827.303–70(b)).

1827.304–3 Contracts for construction work or architect-engineer services. (NASA supplements paragraph (a))

(a) For construction or architect-engineer services contracts with other than a small business or nonprofit organization, see 1827.303–70(b).

1827.304–4 Subcontracts. (NASA supplements paragraph (a))

(a)(i) Unless the contracting officer otherwise authorizes or directs, contractors awarding subcontracts and subcontractors awarding lower-tier subcontracts shall select and include one of the following clauses, suitably modified to identify the parties, in the indicated subcontracts:

(A) The clause at 1852.227–70, New Technology, in any subcontract with other than a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, research, design, or engineering work of any of the types described in 1827.303–70(b) (1)–(6).

(B) The clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form), modified by 1852.227–11 (see 1827.303–70(a)), in any subcontract with a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, or research work.

(ii) Whenever a prime contractor or a subcontractor considers it inappropriate to include one of the clauses discussed in paragraph (a) of this section in a particular subcontract, or a subcontractor refuses to accept the clause, the matter shall be resolved by the contracting officer in consultation with the intellectual property counsel.

1827.304–5 Appeals.

FAR 27.304–5 shall apply unless otherwise provided in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

1827.305 Administration of the patent rights clauses.

1827.305–4 Conveyance of invention rights acquired by the Government. (NASA supplements paragraph (a))

(a) When the Government acquires the entire right to, title to, and interest in an invention under the clause at 1852.227–70, New Technology, a determination of title is to be made in accordance with Section 305(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(a)), and reflected in appropriate instruments executed by NASA and forwarded to the contractor.

Subpart 1827.4—Rights in Data and Copyrights

1827.404 Basic rights in data clause. (NASA supplements paragraphs (d), (e), (f), (g), (h), and (i))

(g) *Release, publication, and use of data.* (3)(A) NASA's intent is to ensure the most expeditious dissemination of computer software developed by it or its contractor. Accordingly, when the clause at FAR 52.227–14, Rights in Data-General, is modified by 1852.227–14 (see 1827.409(a)), the contractor may not assert claim to copyright, publish, or release to others computer software first produced in the performance of a

contract without the contracting officer's prior written permission.

[62 FR 36715, July 9, 1997, as amended at 68 FR 45169, Aug. 1, 2003; 69 FR 35270, June 24, 2004]

1827.409 Solicitation provisions and contract clauses. (NASA supplements paragraph (a), (b), (c), (d), (e), (i), and (k))

(a) The contracting officer shall add subparagraph (3) set forth in 1852.277–14 to paragraph (d) of the clause at FAR 52.227–14, Rights in Data—General, except in solicitations and contracts for basic or applied research with universities or colleges.

(i) The contract officer shall modify the clause at FAR 52.227–17, Rights in Data—Special Works by adding paragraph (f) as set forth in 1852.227–17.

(k)(i) The contracting officer shall add paragraph (e) as set forth in 1852.227–19(a) to the clause at FAR 52.227–19, Commercial Computer Software—Restricted Rights, when it is contemplated that updates, correction notices, consultation information, and other similar items of information relating to commercial computer software delivered under a purchase order or contract are available and their receipt can be facilitated by signing a vendor supplied agreement, registration forms, or cards and returning them directly to the vendor.

(ii) The contracting officer shall add paragraph (f) as set forth at 1852.227–19(b) to the clause at FAR 52.227–19, Commercial Computer Software—Restricted Rights, when portions of a contractor's standard commercial license or lease agreement consistent with the clause, Federal laws, standard industry practices, and the FAR are to be incorporated into the purchase order or contract.

(iii) See 1827.409–70.

[62 FR 36715, July 9, 1997, as amended at 69 FR 35270, June 24, 2004]

1827.409–70 NASA contract clause.

The contracting officer shall use the clause at 1852.227–86, Commercial Computer Software—Licensing, in lieu of FAR 52.227–19, Commercial Computer Software—Restricted Rights, when it is considered appropriate for the acquisition of existing computer software in accordance with FAR 27.405(b)(2).

PART 1828—BONDS AND INSURANCE

Subpart 1828.1—Bonds

Sec.
1828.101 Bid guarantees.
1828.101–70 NASA solicitation provision.
1828.103 Performance and payment bonds and alternative payment protections for other than construction contracts.
1828.103–70 Subcontractors performing construction work under nonconstruction contracts.
1828.103–71 Solicitation requirements and contract clauses.

Subpart 1828.3—Insurance

1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
1828.311–1 Contract clause.
1828.311–2 Agency solicitation provisions and contract clauses.
1828.311–270 NASA solicitation provisions and contract clauses.
1828.370 Fixed-price contract clauses.
1828.371 Clauses incorporating cross-waivers of liability for International Space Station activities and Science or Space Exploration activities unrelated to the International Space Station.
1828.372 Clause for minimum insurance coverage.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55765, Oct. 29, 1996, unless otherwise noted.

Subpart 1828.1—Bonds

1828.101 Bid guarantees.

1828.101–70 NASA solicitation provision.

The contracting officer shall insert the provision at 1852.228–73, Bid Bond, in construction solicitations where offers are expected to exceed $100,000 and a performance bond or a performance and payment bond is required (see FAR 28.102 and 28.103). The contracting officer may increase the amount of the bid bond to protect the Government from loss, as long as the amount does not exceed $3 million.

1828.103 Performance and payment bonds and alternative payment protections for other than construction contracts.

1828.103–70 Subcontractors performing construction work under nonconstruction contracts.

(a) The contracting officer shall require prime contractors on nonconstruction contracts to obtain the following performance and/or payment protection from subcontractors performing construction work:

(1) Performance and payment bonds when the subcontract construction work is in excess of $1000,000 and is determined by NASA to be subject to the Miller Act.

(2) An appropriate payment protection determined according to FAR 28.102–1(b)(1) when the subcontract construction work is greater than $30,000 but not greater than $100,000.

(b) The contracting officer shall establish the penal amount in accordance with FAR 28.102–2 based on the subcontract value.

(c) The bonds shall be provided on SF 25, Performance Bond, and SF 25A, Payment Bond. These forms shall be modified to name the NASA prime contractor as well as the United States of America as obligees.

[61 FR 55765, Oct. 29, 1996, as amended at 71 FR 71073, Dec. 8, 2006]

1828.103–71 Solicitation requirements and contract clauses.

When performance and payment bonds or alternative payment protections are required from subcontractors performing construction work under nonconstruction prime contracts, the contracting officer shall follow the procedures in FAR 28.102–3. When alternative payment protections are required, insert a clause substantially the same as FAR 52.228–13, Alternative Payment Protections, appropriately modified.

Subpart 1828.3—Insurance

1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1828.311–1 Contract clause.

The contracting officer must insert the clause at FAR 52.228–7, Insurance—Liability to Third Persons, as prescribed in FAR 28.311–1, unless—

(a) Waived by the procurement officer; or

(b) The successful offeror represents in its offer that it is totally immune from tort liability as a State agency or as a charitable institution.

[65 FR 54440, Sept. 8, 2000]

1828.311–2 Agency solicitation provisions and contract clauses.

1828.311–270 NASA solicitation provisions and contract clauses.

(a) The contracting officer must insert the clause at 1852.228–71, Aircraft Flight Risks, in all cost-reimbursement contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except when the aircraft are covered by a separate bailment.

(b) The contracting officer must insert the provision at 1852.228–80, Insurance—Immunity from Tort Liability, in solicitations for research and development when a cost-reimbursement contract is contemplated.

(c) The contracting officer must insert FAR clause 52.228–7 and the associated clause at 1852.228–81, Insurance—Partial Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution.

(d) The contracting officer must insert the clause at 1852.228–82, Insurance—Total Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is totally immune from tort liability as a State agency or as a charitable institution.

[65 FR 54440, Sept. 8, 2000]

1828.370 Fixed-price contract clauses.

(a) The contracting officer shall insert the clause at 1852.228–70, Aircraft Ground and Flight Risk, in all negotiated fixed-price contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except as provided in paragraph (b) of this section, unless the aircraft are covered by a separate bailment. See the clause preface for directions for modifying the clause to accommodate various circumstances.

(b) The Government need not assume the risk of aircraft damage, loss, or destruction as provided by the clause at 1852.228–70 if the best estimate of premium costs that would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than $500. If it is determined not to assume this risk, the clause at 1852.228–70 shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover this risk shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the clause at 1852.228–71, Aircraft Flight Risks, suitably adapted for use in a fixed-price contract, shall be used.

(c) When the clause at 1852.228–70 is used, the term ''Contractor's premises'' shall be expressly defined in the contract Schedule and shall be limited to places where aircraft may be located during the performance of the contract. Contractor's premises may include, but are not limited to, those owned or leased by the contractor or those for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

1828.371 Clauses incorporating cross-waivers of liability for International Space Station activities and Science or Space Exploration activities unrelated to the International Space Station.

(a) In contracts covering International Space Station activities, or Science or Space Exploration activities unrelated to the International Space Station that involve a launch, NASA shall require the contractor to agree to waive all claims against any entity or person defined in the clause based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waivers will require the contractor to extend the cross-waiver provisions to their subcontractors at any tier and related entities ensuring those subcontractors and related entities also waive all claims against any entity or person defined in the clause for damages arising out of Protected Space Operations. The purpose of the clauses prescribed in this section is to extend the cross-waivers under other agreements to NASA contractors that perform work in support of NASA's obligations under these agreements.

(b) The contracting officer shall insert the clause at 1852.228–78, Cross-Waiver of Liability for Science or Space Exploration Activities unrelated to the International Space Station, in solicitations and contracts above the simplified acquisition threshold for the acquisition of launches for science or space exploration activities unrelated to the International Space Station or for acquisitions for science or space exploration activities that are not related to the International Space Station but involve a launch. If a science or space exploration activity is in support of the International Space Station, the contracting officer shall insert the clause prescribed by paragraph (c) of this section and designate its application to that particular launch.

(c) The contracting officer shall insert the clause at 1852.228–76, Cross-Waiver of Liability for International Space Station Activities, in solicitations and contracts above the simplified acquisition threshold when the work to be performed involves Protected Space Operations, as that term is defined in the clause, relating to the International Space Station.

(d) At the contracting officer's discretion, the clauses prescribed by paragraphs (b) and (c) of this section may be used in solicitations, contracts, new work modifications, or extensions to existing contracts under the simplified acquisition threshold involving science or space exploration activities unrelated to the International Space Station, or International Space Station activities, respectively, in appropriate circumstances. Examples of such circumstances are when the value of contractor property on a Government installation used in performance of the contract is significant, or when it is likely that the contractor or subcontractor will have its valuable property exposed to risk or damage caused by other participants in the science or space exploration activities unrelated to the International Space Station, or International Space Station activities.

[77 FR 59341, Sept. 27, 2012]

1828.372 Clause for minimum insurance coverage.

In accordance with FAR 28.306(b) and 28.307, the contracting officer may insert a clause substantially as stated at 1852.228–75, Minimum Insurance Coverage, in fixed-price solicitations and in cost-reimbursement contracts. The contracting officer may modify the clause to require additional coverage, such as vessel liability, and higher limits if appropriate for a particular acquisition.

PART 1830—COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 1830.70—Facilities Capital Employed for Facilities in Use and For Facilities Under Construction

Sec.

1830.7001 Facilities capital employed for facilities in use.
1830.7001–1—1830.7001–3 [Reserved]
1830.7001–4 Postaward FCCOM applications.
1830.7002 Facilities capital employed for facilities under construction.
1830.7002–1 Definitions.
1830.7002–2 Cost of money calculations.
1830.7002–3 Representative investment calculations.
1830.7002–4 Determining imputed cost of money.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55767, Oct. 29, 1996, unless otherwise noted.

Subpart 1830.70—Facilities Capital Employed for Facilities in Use and For Facilities Under Construction

1830.7001 Facilities capital employed for facilities in use.

1830.7001–1—1830.7001–3 [Reserved]

1830.7001–4 Postaward FCCOM applications.

(a) *Interim billings based on costs incurred.* (1) The contractor may include FCCOM in cost reimbursement and progress payment invoices. To determine the amount that qualifies as cost incurred, multiply the incurred portions of the overhead pool allocation bases by the latest available cost of money factors. These FCCOM calculations are interim estimates subject to adjustment.

(2) As actual cost of money factors are finalized, use the new factors to calculate FCCOM for the next accounting period.

(b) *Final settlements.* (1) Contract FCCOM for final cost determination or repricing is based on each year's final cost of money factors determined under CAS 414 and supported by separate Forms CASB-CMF.

(2) Separately compute contract FCCOM in a manner similar to yearly final overhead rates. As in overhead rates, include in the final settlement an adjustment from interim to final contract FCCOM. Do not adjust the contract estimated or target cost.

1830.7002 Facilities capital employed for facilities under construction.

1830.7002–1 Definitions.

(a) *Cost of money rate* is either—

(1) The interest rate determined by the Secretary of the Treasury under Public Law 92–41 (85 Stat. 97); or

(2) The time-weighted average of such rates for each cost accounting period during which the capital asset is being constructed, fabricated, or developed.

(b) *Representative investment* is the calculated amount considered invested

by the contractor during the cost accounting period to construct, fabricate, or develop the capital asset.

1830.7002–2 Cost of money calculations.

(a) The interest rate referenced in 1830.7002–1(a)(1) is established semi-annually and published in the FEDERAL REGISTER during the fourth week of December and June.

(b) To calculate the time-weighted average interest rate referenced in 1830.7002–1(a)(2), multiply the rates in effect during the months of construction by the number of months each rate was in effect, and then divide the sum of the products by the total number of months.

1830.7002–3 Representative investment calculations.

(a) The calculation of the representative investment requires consideration of the rate or expenditure pattern of the costs to construct, fabricate, or develop a capital asset.

(b) If the majority of the costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor shall either:

(1) Determine a representative investment for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(2) Treat month-end balances as individual representative investments.

(c) If the costs were incurred in a fairly uniform expenditure pattern throughout the construction, fabrication, or development period, the contractor may either:

(1) Determine a representative investment for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(2) Treat month-end balances as individual representative investments.

(d) The method chosen by the contractor to determine the representative investment amount may be different for each capital asset being constructed, fabricated, or developed, provided the method fits the expenditure pattern of the costs incurred.

1830.7002–4 Determining imputed cost of money.

(a) Determine the imputed cost of money for an asset under construction, fabrication, or development by applying a cost of money rate (see 1830.7002–2) to the representative investment (see 1830.7002–3).

(1) When a representative investment is determined for a cost accounting period in accordance with 1830.7002–3(b)(1) or 1830.7002–3(c)(1), the cost of money rate shall be the time-weighted average rate.

(2) When a monthly representative investment is used in accordance with 1830.7002–3(b)(2) or 1830.7002–3(c)(2), the cost of money rate shall be that in effect each month. Under this method, the FCCOM is determined monthly, and the total for the cost accounting period is the sum of the monthly calculations.

(b) The imputed cost of money will be capitalized only once in any cost accounting period, either at the end of the accounting period or the end of the construction, fabrication, or development period, whichever comes first.

(c) When the construction, fabrication, or development of an asset takes more than one accounting period, the cost of money capitalized for the first accounting period will be included in determining the representative investment for any future cost accounting periods.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1831.2—Contracts With Commercial Organizations

Sec.

1831.205 Selected costs.
1831.205–70 Contract clause.
1831.205–671 Solicitation provision.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55768, Oct. 29, 1996, unless otherwise noted.

Subpart 1831.2—Contracts with Commercial Organizations

1831.205 Selected costs.

1831.205–70 Contract clause.

The contracting officer must insert the clause at 1852.231–70, Precontract Costs, in contracts for which specific coverage of precontract costs is authorized.

[61 FR 55768, Oct. 29, 1996, as amended at 65 FR 46628, July 31, 2000; 69 FR 35271, June 24, 2004]

1831.205–671 Solicitation provision.

The contracting officer must insert a provision substantially the same as the provision at 1852.231–71, Determination of Compensation, in solicitations for services which contemplate the award of a cost reimbursement or non-competitive fixed-price type service contract having a total potential value in excess of $500,000.

[62 FR 4467, Jan. 30, 1997, as amended at 65 FR 46628, July 31, 2000]

PART 1832—CONTRACT FINANCING

Sec.

Subpart 1832.1—Non-Commercial Item Purchase Financing

1832.111 Contract clauses for non-commercial purchases.
1832.111–70 NASA contract clause.

Subpart 1832.2—Commercial Item Purchase Financing

1832.202–1 Policy.
1832.206 Solicitation provisions and contract clauses.

Subpart 1832.4—Advance Payments For Non-Commercial Items

1832.412 Contract clause.
1832.412–70 NASA Contract clauses.

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.
1832.501–1 Customary progress payment rates.
1832.502–4 Contract clauses.
1832.502–470 NASA contract clause.

Subpart 1832.7—Contract Funding

1832.705 Contract clauses.
1832.705–2 Clauses for limitation of cost or funds.
1832.705–270 NASA clauses for limitation of cost or funds.

Subpart 1832.10—Performance-Based Payments

1832.1005 Contract clauses.
1832.1009 Title.

Subpart 1832.11—Electronic Funds Transfer

1832.1110 Solicitation provision and contract clauses.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55768, Oct. 29, 1996, unless otherwise noted.

Subpart 1832.1—Non-Commercial Item Purchase Financing

1832.111 Contract clauses for non-commercial purchases.

1832.111–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.232–79, Payment for On-Site Preparatory Costs, in solicitations and contracts for construction on a fixed-price basis when progress payments are contemplated and pro rata payment of on-site preparatory costs to the contractor is appropriate.

Subpart 1832.2—Commercial Item Purchase Financing

1832.202–1 Policy. (NASA supplements paragraph (b))

(b)(6) Advance payment limitations do not apply to expendable launch vehicle (ELV) service contracts.

[61 FR 55768, Oct. 29, 1996, as amended at 69 FR 35271, June 24, 2004]

1832.206 Solicitation provisions and contract clauses. (NASA supplements paragraph (g))

(g)(2) The installment payment rate shall be that which is common in the commercial marketplace for the purchased item. If there is no commonly used rate, the contracting officer shall determine the appropriate rate. In no case shall the rate exceed that established in the clause at FAR 52.232–30.

Subpart 1832.4—Advance Payments for Non-Commercial Items

1832.412 Contract clause. (NASA supplement paragraphs (e) and (f))

(e) The contracting officer shall use Alternates IV and V when advance payments are provided on Phase I contracts of the Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) programs.

(f) See 1832.412(e).

[63 FR 14040, Mar. 24, 1998]

1832.412–70 NASA Contract clauses.

When the clause at FAR 52.232–12 or its Alternates II or V are used, insert the clause at 1852.232–70, NASA Modification of FAR 52.232–12.

[63 FR 14040, Mar. 24, 1998]

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.

1832.501–1 Customary progress payment rates. (NASA supplements paragraph (a))

(a) The customary progress payment rate for all NASA contracts is 85 percent for large business, 90 percent for small business, 95 percent for small disadvantaged business, and 100 percent for Phase II contracts in the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. The contracting officer shall insert the applicable percentage in paragraphs (a) and (b) of the clause at FAR 52.232–16.

1832.502–4 Contract clauses.

1832.502–470 NASA contract clause.

The contracting officer may insert a clause substantially as stated at 1852.232–82, Submission of Requests for Progress Payments, in fixed-price solicitations and contracts that provide for progress payments. The recipient of the requests and number of copies may be changed as required.

Subpart 1832.7—Contract Funding

1832.705 Contract clauses.

1832.705–2 Clauses for limitation of cost or funds.

1832.705–270 NASA clauses for limitation of cost or funds.

(a) The contracting officer shall insert the clause at 1852.232–77, Limitation of Funds (Fixed-Price Contract), in solicitations and contracts for fixed-price incrementally funded research and development.

(b) The contracting officer shall insert a clause substantially as stated at 1852.232–81, Contract Funding, in Section B of solicitations and contracts containing the clause at FAR 52.232–22, Limitation of Funds. Insert the amounts of funds available for payment, the items covered, and the applicable period of performance. The amount obligated for fee in paragraph (b) of the clause should always be sufficient to pay fee anticipated to be earned for the work funded by the amount in paragraph (a) of the clause.

Subpart 1832.10—Performance-Based Payments

1832.1005 Contract clauses. (NASA supplements paragraph (a))

(a) If the contract is for launch services, the contracting officer shall delete paragraph (f) of the clause at FAR 52.232–32 in accordance with 1832.1009.

[61 FR 55768, Oct. 29, 1996, as amended at 65 FR 31103, May 16, 2000; 69 FR 35271, June 24, 2004]

1832.1009 Title.

In accordance with 42 U.S.C. 2465d, NASA shall not take title to launch vehicles under contracts for launch services unless one of the exceptions in the law applies. However, the law does not eliminate NASA's right to take title to other property acquired or produced by the contractor under a contract containing a title provision.

Subpart 1832.11—Electronic Funds Transfer

1832.1110 Solicitation provision and contract clauses. (NASA supplements paragraphs (a), (b), and (c)).

(a)(1) NASA does not use the Central Contractor Registration. Use the clause at FAR 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration.

(b) In accordance with FAR 32.1106(b), the use of a nondomestic EFT mechanism is authorized. When a nondomestic EFT mechanism is used, the contracting officer shall replace the paragraph at FAR 52.232–34(c) with a description of the EFT mechanism that will be used for the contract.

[64 FR 18373, Apr. 14, 1999, as amended at 69 FR 35271, June 24, 2004]

PART 1833—PROTESTS, DISPUTES, AND APPEALS

Subpart 1833.1—Protests

Sec.
1833.103 Protests to the agency.
1833.106–70 Solicitation provision.

Subpart 1833.2—Disputes and Appeals

1833.215 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55771, Oct. 29, 1996, unless otherwise noted.

Subpart 1833.1—Protests

1833.103 Protests to the agency. (NASA supplements paragraphs (c), (d) and (f).)

(c) An independent review under the provision at 1852.233–70 is available as an alternative to a protest to the contracting officer, but not as an appeal of a protest decision. All independent reviews shall be conducted by the Associate Administrator for Procurement or designee. Such reviews are different from the Ombudsman Program described at 1815.7001.

(d) NASA shall summarily dismiss and take no further action upon any protest to the Agency if the substance of the protest is pending in judicial proceedings or the protester has filed a protest on the same acquisition with the United States GeneralAccounting Office prior to receipt of an Agency protest decision.

(4) When a potential bidder or offeror submits an Agency protest to NASA to the contracting officer or alternatively requests an independent review, the decision of the contracting officer or the independent review official shall be final and is not subject to any appeal or reconsideration within NASA.

[62 FR 11108, Mar. 11, 1997, as amended at 64 FR 36607, July 7, 1999; 67 FR 61519, Oct. 1, 2002; 69 FR 35271, June 24, 2004]

1833.106–70 Solicitation provision.

Contracting officers shall insert the provision at 1852.233–70 in all solicitations.

[62 FR 11108, Mar. 11, 1997]

Subpart 1833.2—Disputes and Appeals

1833.215 Contract clause.

The contracting officer shall use the clause at FAR 52.233–1, Disputes, with its Alternate I whenever continued performance is vital to national security, the public health and welfare, important agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1834—MAJOR SYSTEM ACQUISITION

Subpart 1834.2—Earned Value Management System

Sec.
1834.201 Policy.
1834.203 Solicitation provisions and contract clause.
1834.203–70 NASA solicitation provision and contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 71 FR 66120, Nov. 13, 2006, unless otherwise noted.

Subpart 1834.2—Earned Value Management System

1834.201 Policy.

(a) NASA requires use of an Earned Value Management System (EVMS) on acquisitions for development or production work, including development or production work for flight and ground support systems and components, prototypes, and institutional investments (facilities, IT infrastructure, etc.) as specified below:

(1) For cost or fixed-price incentive contracts and subcontracts valued at $50 Million or more the contractor shall have an EVMS that has been determined by the cognizant Federal agency to be in compliance with the guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA–748).

(2) For cost or fixed-price incentive contracts and subcontracts valued at $20 Million or more but less than $50 Million, the contractor shall have an EVMS that complies with the guidelines in ANSI/EIA–748, as determined by the cognizant Contracting Officer.

(3) For cost or fixed-price incentive contracts and subcontracts valued at less than $20 Million the application of EVM is optional and is a risk-based decision at the discretion of the program/project manager.

(b) Requiring earned value management for firm-fixed-price (FFP) contracts and subcontracts of any dollar value is discouraged; however, a schedule management system and adequate reporting shall be required to plan and track schedule performance for development or production contracts valued at $20 Million or more. In addition, for FFP contracts that are part of a program/project of $50 Million or more, the contracting officer shall collaborate with the government's program/project manager to ensure the appropriate data can be obtained or generated to fulfill program management needs and comply with NASA Procedural Requirements (NPR) 7120.5.

(c) An EVMS is not required on nondevelopmental contracts for engineering support services, steady state operations, basic and applied research, and routine services such as janitorial services or grounds maintenance services.

(d) Contracting officers shall request the assistance of the cognizant Defense Contract Management Agency (DCMA) office in determining the adequacy of proposed EVMS plans and procedures and system compliance.

(e) Notwithstanding the EVMS requirements above, if an offeror proposes to use a system that has not been determined to be in compliance with the American National Standards Institute/Electronics Industries Alliance (ANSI/EIA) Standard–748, Earned Value Management Systems, the offeror shall submit a comprehensive plan for compliance with these EVMS standards, as specified in 1852.234–1, Notice of Earned Value Management System. Offerors shall not be eliminated from consideration for contract award because they do not have an EVMS that complies with these standards.

[76 FR 40280, July 8, 2011]

1834.203 Solicitation provisions and contract clause.

The FAR EVMS solicitation provisions and contract clause are not used in NASA contracts. See 1834.203–70 for the NASA EVMS solicitation provision and contract clause.

1834.203–70 NASA solicitation provision and contract clause.

Except for firm-fixed price contracts and the contracts identified in 1834.201(a)(3), the contracting officer shall insert—

(a) The provision at 1852.234–1, Notice of Earned Value Management System, in solicitations for contracts for—

(1) Development or production, including flight and ground support projects, and institutional projects (facility, IT investment, etc.), with a value exceeding $20M; and

(2) Acquisitions of any value designated as major by the project manager in accordance with OMB Circular A–11; and

(b) The clause at 1852.234–2, Earned Value Management System, in solicitations and contracts with a value exceeding $50M that include the provision at 1852.234–1. The contracting officer shall use the clause with its Alternate I when the contract value is less than $50M.

[71 FR 66120, Nov. 13, 2006, as amended at 76 FR 40281, July 8, 2011]

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
1835.016–70 Foreign participation under broad agency announcements (BAAs).
1835.016–71 NASA Research Announcements.
1835.070 NASA contract clauses and solicitation provision.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 4469, Jan. 30, 1997, unless otherwise noted.

1835.016–70 Foreign participation under broad agency announcements (BAAs).

(a) *Policy*. (1) NASA seeks the broadest participation in response to broad agency announcements, including foreign proposals or proposals including foreign participation. NASA's policy is to conduct research with foreign entities on a cooperative, no-exchange-of-funds basis (see NPD 1360.2, Initiation and Development of International Cooperation in Space and Aeronautics Programs). NASA does not normally fund foreign research proposals or foreign research efforts that are part of U.S. research proposals. Rather, cooperative research efforts are implemented via international agreements between NASA and the sponsoring foreign agency or funding/sponsoring institution under which the parties agree to each bear the cost of discharging their respective responsibilities.

(2) In accordance with the National Space Transportation Policy, use of a non-U.S. manufactured launch vehicle is permitted only on a no-exchange-of-funds basis.

(3) NASA funding may not be used for subcontracted foreign research efforts. The direct purchase of supplies and/or services, which do not constitute research, from non-U.S. sources by U.S. award recipients is permitted.

[64 FR 48561, Sept. 7, 1999, as amended at 69 FR 35272, June 24, 2004]

1835.016–71 NASA Research Announcements.

(a) Scope. An NRA is used to announce research interests in support of NASA's programs, and, after peer or scientific review using factors in the NRA, select proposals for funding. Unlike an RFP containing a statement of work or specification to which offerors are to respond, an NRA provides for the submission of competitive project ideas, conceived by the offerors, in one or more program areas of interest. An NRA shall not be used when the requirement is sufficiently defined to specify an end product or service.

[62 FR 4469, Jan. 30, 1997, as amended at 62 FR 14017, Mar. 25, 1997; 63 FR 9967, Feb. 27, 1998. Redesignated and amended at 64 FR 48561, Sept. 7, 1999; 65 FR 12485, Mar. 9, 2000; 65 FR 46628, July 31, 2000; 65 FR 82297, Dec. 28, 2000; 66 FR 53547, Oct. 23, 2001; 67 FR 30604, May 7, 2002; 69 FR 35272, June 24, 2004]

1835.070 NASA contract clauses and solicitation provision.

(a) The contracting officer shall insert the clause at 1852.235–70, Center for AeroSpace Information, in all research and development contracts, and interagency agreements and cost-reimbursement supply contracts involving research and development work.

(b) The contracting officer shall insert the clause at 1852.235–71, Key Personnel and Facilities, in contracts

when source selection has been substantially predicated upon the possession by a given offeror of special capabilities, as represented by key personnel or facilities.

(c) The contracting officer shall ensure that the provision at 1852.235–72, Instructions for Responding to NASA Research Announcements, is inserted in all NRAs. The instructions may be supplemented, but only to the minimum extent necessary.

(d) The contracting officer shall insert the clause at 1852.235–73, Final Scientific and Technical Reports, in all research and development contracts, and in interagency agreements and cost-reimbursement supply contracts involving research and development work.

(1) The contracting officer, after consultation with and concurrence of the program or project manager and the center Export Control Administrator, shall insert the clause with its Alternate I when the contract includes ''fundamental research'' as defined at 22 CFR 120.11(8) and no prior review of data, including the final report, produced during the performance of the contract is required for export control or national security purposes before the contractor may publish, release, or otherwise disseminate the data.

(2) The contracting officer, after consultation with and concurrence by the program or project manager and where necessary the center Export Control Administrator, shall insert the clause with its Alternate II, when prior review of all data produced during the performance of the contract is required before the contractor may publish, release, or otherwise disseminate the data. For example, when data produced during performance of the contract may be subject to export control, national security restrictions, or other restrictions designated by NASA; or, to the extent the contractor receives or is given access to data that includes restrictive markings, may include proprietary information of others.

(3) Except when Alternate II applies in accordance with paragraph (d)(2) of this section, the contracting officer shall insert the clause with its Alternate III in all SBIR and STTR contracts.

(e) The contracting officer shall insert a clause substantially the same as the clause at 1852.235–74, Additional Reports of Work—Research and Development, in all research and development contracts, and in interagency agreements and cost-reimbursement supply contracts involving research and development work, when periodic reports, such as monthly or quarterly reports, or reports on the completion of significant units or phases of work are required for monitoring contract performance. The clause should be modified to reflect the reporting requirements of the contract and to indicate the timeframe for submission of the final report.

[68 FR 5231, Feb. 3, 2003, as amended at 70 FR 2022, Jan. 12, 2005]

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1836.2—Special Aspects of Contracting for Construction

Sec.
1836.203 Government estimate of construction costs.
1836.213–370 Additive and deductive items.

Subpart 1836.5—Contract Clauses

1836.513 Accident prevention.
1836.570 NASA solicitation provisions and contract clause.

Subpart 1836.6—Architect-Engineer Services

1836.602 Selection of firms for architect-engineer contracts.
1836.602–1 Selection criteria.

Subpart 1836.70—Partnering

1836.7004 NASA solicitation provision and contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 62 FR 4471, Jan. 30, 1997, unless otherwise noted.

Subpart 1836.2—Special Aspects of Contracting for Construction

1836.203 Government estimate of construction costs.(NASA supplements paragraph (c))

(c)(i) If the acquisition is by sealed bidding, the contracting officer shall

file a sealed copy of the detailed Government estimate with the bids until bid opening. After the bids are read and recorded, the contracting officer shall read the estimate, and record it in the same detail as the bids.

(ii) If the acquisition is by negotiation, the contracting officer may disclose the overall amount of the Government estimate after award upon request of offerors.

1836.213–370 Additive and deductive items.

When it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the invitation for bids for a first or base bid item covering the work generally as specified and one or more additive or deductive bid items progressively adding or omitting specified features of the work in a stated order of priority. In such case, the contracting officer, before the opening of bids, shall record in the contract file the amount of funds available for the project and determine the low bidder and the items to be awarded in accordance with the provision at 1852.236–71, Additive or Deductive Items.

[62 FR 36721, July 9, 1997. Redesignated at 64 FR 5621, Feb. 4, 1999]

Subpart 1836.5—Contract Clauses

1836.513 Accident prevention.

The contracting officer must insert the clause at 1852.223–70, Safety and Health, in lieu of FAR clause 52.236–13, Accident Prevention, and its Alternate I.

[67 FR 17016, Apr. 9, 2002]

1836.570 NASA solicitation provisions and contract clause.

(a) The contracting officer shall insert the provision at 1852.236–71, Additive or Deductive Items, in invitations for bids for construction when it is desired to add or deduct bid items to meet available funding.

(b) The contracting officer shall insert the provision at 1852.236–72, Bids with Unit Prices, in invitations for bids for construction when the invitation contemplates unit prices of items.

(c) The contracting officer shall insert the clause at 1852.236–73, Hurricane Plan, in solicitations and contracts for construction at sites that experience hurricanes.

(d) The contracting officer shall insert the provision at 1852.236–74, Magnitude of Requirement, in solicitations for construction. Insert the appropriate estimated dollar range in accordance with FAR 36.204.

Subpart 1836.6—Architect-Engineer Services

1836.602 Selection of firms for architect-engineer contracts.

1836.602–1 Selection criteria. (NASA supplements paragraph (a))

(a)(2) The evaluation of specialized experience and technical competence shall be limited to the immediately preceding ten years.

(4) The evaluation of past performance shall be limited to the immediately preceding ten years.

(6) The architect-engineer selection board may also establish evaluation criteria regarding the volume of work previously awarded to the firm by NASA, with the object of effecting an equitable distribution of contracts among qualified architect-engineer firms, including minority-owned firms and firms that have not had prior NASA contracts.

[62 FR 4471, Jan. 30, 1997, as amended at 66 FR 53548, Oct. 23, 2001]

Subpart 1836.70—Partnering

1836.7004 NASA solicitation provision and contract clause.

The contracting officer may insert a clause substantially the same as stated at 1852.236–75, Partnering for Construction Contracts, in solicitations and contracts for construction, when it has been determined that the benefits to be derived from partnering exceed the costs.

SOURCE: 63 FR 44170, Aug. 18, 1998, unless otherwise noted.

PART 1837—SERVICE CONTRACTING

Subpart 1837.1—Service Contracts—General

Sec.
1837.101 Definitions.
1837.104 Personal services contracts.
1837.110 Solicitation provisions and contract clauses.
1837.110–70 NASA solicitation provision and contract clauses.
1837.170 Pension portability.

Subpart 1837.2—Advisory and Assistance Services

1837.203 Policy.
1837.203–70 Providing contractors access to sensitive information.
1837.203–71 Release of contractors' sensitive information.
1837.203–72 NASA contract clauses.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 4472, Jan. 30, 1997, unless otherwise noted.

Subpart 1837.1—Service Contracts—General

1837.101 Definitions.

Pension portability means the recognition and continuation in a successor service contract of the predecessor service contract employees' pension rights and benefits.

1837.104 Personal services contracts. (NASA supplements paragraph (b))

(b) Section 203(c)(9) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(9)) authorizes NASA ''to obtain services as authorized by Section 3109 of Title 5, United States Code.'' It is NASA policy to obtain the personal services of experts and consultants by appointment rather than by contract. The policies, responsibilities, and procedures pertaining to the appointment of experts and consultants are in NPR 3300.1, Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants.

[62 FR 4472, Jan. 30, 1997, as amended at 64 FR 12485, Mar. 9, 2000; 66 FR 53548, Oct. 23, 2001; 69 FR 63459, Nov. 2, 2004]

1837.110 Solicitation provisions and contract clauses.

1837.110–70 NASA solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 1852.237–70, Emergency Evacuation Procedures, in solicitations and contracts for on-site support services where emergency evacuations of the NASA installation may occur, e.g., snow, hurricanes, tornadoes, earthquakes, or other emergencies.

(b) The contracting officer shall insert the clause at 1852.237–71, Pension Portability, in solicitations, contracts or negotiated contract modifications for additional work when the procurement officer makes the determination in 1837.170(a)(2).

[62 FR 4472, Jan. 30, 1997, as amended at 62 FR 36721, July 9, 1997; 62 FR 58688, Oct. 30, 1997]

1837.170 Pension portability.

(a) It is NASA's policy not to require pension portability in service contracts. However, pension portability requirements may be included in solicitations, contracts, or contract modifications for additional work under the following conditions:

(1)(i) There is a continuing need for the same or similar services for a minimum of five years (inclusive of options), and, if the contractor changes, a high percentage of the predecessor contractor's employees are expected to remain with the program; or

(ii) The employees under a predecessor contract were covered by a portable pension plan, a follow-on contract or a contract consolidating existing services is awarded, and the total contract period covered by the plan covers a minimum of five years (including both the predecessor and successor contracts); and

(2) The procurement officer determines in writing, with full supporting rationale, that such a requirement is in the Government's best interest. The procurement officer shall maintain a record of all such determinations.

(b) When pension portability is required, the plan shall comply with the requirements of the clause at 1852.237–71, Pension Portability, (see 1837.110–

70(b)), and the contract shall also include a clear description of the plan, including service, pay, liabilities, vesting, termination, and benefits from prior contracts.

Subpart 1837.2—Advisory and Assistance Services

1837.203 Policy. (NASA supplements paragraph (c))

(c) Advisory and assistance services of individual experts and consultants shall normally be obtained by appointment rather than by contract (see NPR 3300.1, Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants).

[62 FR 4472, Jan. 30, 1997, as amended at 64 FR 51079, Sept. 21, 1999; 66 FR 53548, Oct. 23, 2001; 69 FR 63459, Nov. 2, 2004]

1837.203–70 Providing contractors access to sensitive information.

(a)(1) As used in this subpart, ''sensitive information'' refers to information that the contractor has developed at private expense or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, may embody trade secrets or commercial or financial information, and may be sensitive or privileged, the disclosure of which is likely to have either of the following effects: To impair the Government's ability to obtain this type of information in the future; or to cause substantial harm to the competitive position of the person from whom the information was obtained. The term is not intended to resemble the markings of national security documents as in sensitive-secret-top secret.

(2) As used in this subpart, ''requiring organization'' refers to the NASA organizational element or activity that requires specified services to be provided.

(3) As used in this subpart, ''service provider'' refers to the service contractor that receives sensitive information from NASA to provide services to the requiring organization. (b)(1) To support management activities and administrative functions, NASA relies on numerous service providers. These contractors may require access to sensitive information in the Government's possession, which may be entitled to protection from unauthorized use or disclosure.

(2) As an initial step, the requiring organization shall identify when needed services may entail access to sensitive information and shall determine whether providing access is necessary for accomplishing the Agency's mission. The requiring organization shall review any service provider requests for access to information to determine whether the access is necessary and whether the information requested is considered ''sensitive'' as defined in paragraph (a)(1) of this section.

(c) When the requiring organization determines that providing specified services will entail access to sensitive information, the solicitation shall require each potential service provider to submit with its proposal a preliminary analysis of possible organizational conflicts of interest that might flow from the award of a contract. After selection, or whenever it becomes clear that performance will necessitate access to sensitive information, the service provider must submit a comprehensive organizational conflicts of interest avoidance plan.

(d) This comprehensive plan shall incorporate any previous studies performed, shall thoroughly analyze all organizational conflicts of interest that might arise because the service provider has access to other companies' sensitive information, and shall establish specific methods to control, mitigate, or eliminate all problems identified. The contracting officer, with advice from Center counsel, shall review the plan for completeness and identify to the service provider substantive weaknesses and omissions for necessary correction. Once the service provider has corrected the substantive weaknesses and omissions, the contracting officer shall incorporate the revised plan into the contract, as a compliance document.

(e) If the service provider will be operating an information technology system for NASA that contains sensitive information, the operating contract shall include the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources,

which requires the implementation of an Information Technology Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use.

(f) NASA will monitor performance to assure any service provider that requires access to sensitive information follows the steps outlined in the clause at 1852.237–72, Access to Sensitive Information, to protect the information from unauthorized use or disclosure.

[70 FR 35554, June 21, 2005]

1837.203–71 Release of contractors' sensitive information.

Pursuant to the clause at 1852.237–73, Release of Sensitive Information, offerors and contractors agree that NASA may release their sensitive information when requested by service providers in accordance with the procedures prescribed in 1837.203–70 and subject to the safeguards and protections delineated in the clause at 1852.237–72, Access to Sensitive Information. As required by the clause at 1852.237–73, or other contract clause or solicitation provision, contractors must identify information they claim to be ''sensitive'' submitted as part of a proposal or in the course of performing a contract. The contracting officer shall evaluate all contractor claims of sensitivity in deciding how NASA should respond to requests from service providers for access to information.

[70 FR 35554, June 21, 2005]

1837.203–72 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.237–72, Access to Sensitive Information, in all solicitations and contracts for services that may require access to sensitive information belonging to other companies or generated by the Government.

(b) The contracting officer shall insert the clause at 1852.237–73, Release of Sensitive Information, in all solicitations, contracts, and basic ordering agreements.

[70 FR 35554, June 21, 2005]

PART 1839—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 1829.1—General

Sec.
1839.107 Contract clause.
1839.107–70 NASA contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 62 FR 4473, Jan. 30, 1997, unless otherwise noted.

Subpart 1839.1—General

1839.107 Contract clause.

[62 FR 4473, Jan. 30, 1997. Redesignated at 62 FR 36721, July 9, 1997]

1839.107–70 NASA contract clause.

(a)(1) The contracting officer shall insert the clause substantially as stated at 1852.239–70, Alternate Delivery Points, in solicitations and contracts for information technology when:

(i) An indefinite delivery/indefinite quantity contract will be used or when the contract will include options for additional quantities; and

(ii) Delivery is F.O.B. destination to the contracting activity.

(2) When delivery is F.O.B. origin and Government bills of lading (GBL) are used, the contracting officer shall use the clause with its Alternate I.

[62 FR 4473, Jan. 30, 1997. Redesignated at 62 FR 36721, July 9, 1997]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1840 [RESERVED]

PART 1841—ACQUISITION OF UTILITY SERVICES

Subpart 1841.5—Solicitation Provision and Contract Clauses

Sec.
1841.501 Solicitation provision and contract clauses.
1841.501–70 NASA contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 4474, Jan. 30, 1997, unless otherwise noted.

Subpart 1841.5—Solicitation Provision and Contract Clauses

1841.501 Solicitation provision and contract clauses.

1841.501–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.241–70, Renewal of Contract, in solicitations and contracts for utility services if it is desirable that the utility service be provided under the same terms and conditions for more than 1 year.

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 1842.2—Contract Administration Services

Sec.
1842.271 NASA clause.

Subpart 1842.70—Additional NASA Contract Clauses

1842.7001 Observance of legal holidays.
1842.7002 Travel outside of the United States.
1842.7003 Emergency medical services and evacuation.

Subpart 1842.71—Submission of Vouchers

1842.7101 Submission of vouchers.

Subpart 1842.72—NASA Contractor Financial Management Reporting

1842.7201 General.
1842.7202 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14017, Mar. 25, 1997, unless otherwise noted.

Subpart 1842.2—Contract Administration Services

1842.271 NASA clause.

Insert the clause at 1852.242–70, Technical Direction, when paragraph 3(m) of the NASA Form 1634 specifically authorizes a COTR to issue technical direction.

Subpart 1842.70—Additional NASA Contract Clauses

1842.7001 Observance of legal holidays.

(a) The contracting officer shall insert the clause at 1852.242–72, Observance of Legal Holidays, in contracts when work will be performed at a NASA installation.

(b) The clause shall be used with its Alternate I in cost-reimbursement contracts when it is desired that contractor employees not have access to the installation during Government holidays. This alternate may be appropriately modified for fixed-price contracts.

(c) The clause may be used with its Alternate II in cost-reimbursement contracts when it is desired that administrative leave be granted contractor personnel in special circumstances, such as inclement weather or potentially hazardous conditions. This alternate may be appropriately modified for fixed-price contracts.

[62 FR 14017, Mar. 25, 1997, as amended at 63 FR 32764, June 16, 1998; 65 FR 46628, July 31, 2000]

1842.7002 Travel outside of the United States.

The contracting officer shall insert the clause at 1852.242–71, Travel Outside of the United States, in cost-reimbursement solicitations and contracts where a contractor may travel outside of the United States and it is appropriate to require Government approval of the travel.

1842.7003 Emergency medical services and evacuation.

The contracting officer must insert the clause at 1852.242–78, Emergency Medical Services and Evacuation, in all solicitations and contracts when employees of the contractor are required to travel outside the United States or to remote locations in the United States.

[66 FR 18054, Apr. 5, 2001]

Subpart 1842.71—Submission of Vouchers

1842.7101 Submission of vouchers.

(a) Vouchers shall be submitted in accordance with the clause at 1852.216–87, Submission of Vouchers for Payment.

(b) The auditor shall retain an unpaid copy of the voucher.

(c) When a voucher submitted in accordance with the clause at 1852.216–87 contains one or more individual direct freight charges of $100 or more, an additional copy of Standard Form 1034A and Standard Form 1035A shall be submitted and marked for return to the contractor after payment. This copy shall be transmitted quarterly by the contractor with the freight bills to the General Services Administration. When a voucher is identified as the ''Completion Voucher,'' an additional copy shall be submitted for transmittal to the NASA contracting officer.

Subpart 1842.72—NASA Contractor Financial Management Reporting

1842.7201 General.

(a) [Reserved]

(b) Reporting requirements. (1) Use of the NASA Contractor Financial Management Reports, the NASA form 533 series, is required on cost-type, price redetermination, and fixed-price incentive contracts when the following dollar, period of performance, and scope criteria are met:

Contract value/scope	Period of performance	533M	533Q
$500K to $999K	1 year or more	Required	Optional.
$1,000,000 and over	Less than 1 year	Required	Optional.
$1,000,000 and over	1 year or more	Required	Required.

(2) When it is probable that a contract will ultimately meet the criteria in paragraph (b)(1) of this section through change orders, supplemental agreements, etc., the reporting requirement must be implemented in the contract based on the estimated final contract value at the time of award.

[62 FR 14017, Mar. 25, 1997, as amended at 69 FR 44609, July 27, 2004]

1842.7202 Contract clause.

The contracting officer shall insert the clause at 1852.242–73, NASA Contractor Financial Management Reporting, in solicitations and contracts when any of the NASA Form 533 series of reports is required from the contractor.

[62 FR 36721, July 9, 1997]

PART 1843—CONTRACT MODIFICATIONS

Subpart 1843.2—Change Orders

Sec.
1843.205 Contract clauses.
1843.205–70 NASA contract clauses.

Subpart 1843.71—Shared Savings

1843.7101 Shared Savings Program.
1843.7102 Solicitation provision and contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14022, Mar. 25, 1997, unless otherwise noted.

Subpart 1843.2—Change Orders

1843.205 Contract clauses.

As authorized in the prefaces of clauses FAR 52.243–1, Changes—Fixed Price; FAR 52.243–2, Changes—Cost Reimbursement; and FAR 52.243–4,

Changes; and in the prescription at 43.205(c) for FAR 52.243–3, Changes—Time-and-Material or Labor-Hours, the period within which a contractor must assert its right to an equitable adjustment may be varied not to exceed 60 calendar days.

[65 FR 58932, Oct. 3, 2000]

1843.205–70 NASA contract clauses.

(a)(1) The contracting officer may insert in contracts a clause substantially the same as 1852.243–70, Engineering Change Proposals, when ECPs are expected. Paragraphs (c) and (d) of the basic clause and Alternate I of the clause shall be changed to reflect the specific type of contract.

(2) If it is desirable to preclude a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing them, the contracting officer shall use the clause with its Alternate I.

(3) If the contract is a cost-reimbursement type, the contracting officer shall use the clause with its Alternate II.

(b) The contracting officer may insert a clause substantially as stated at 1852.243–72, Equitable Adjustments, in solicitations and contracts for—

(1) Dismantling, demolishing, or removing improvements; or

(2) Construction, when the contract amount is expected to exceed the simplified acquisition threshold and a fixed-price contract is contemplated.

[62 FR 14022, Mar. 25, 1997, as amended at 63 FR 17339, Apr. 9, 1998; 66 FR 53548, Oct. 23, 2001]

Subpart 1843.71—Shared Savings

1843.7101 Shared Savings Program.

This subpart establishes and describes the methods for implementing and administering a Shared Savings Program. This program provides an incentive for contractors to propose and implement, with NASA approval, significant cost reduction initiatives. NASA will benefit as the more efficient business practices that are implemented lead to reduced costs on current and follow-on contracts. In return, contractors are entitled to share in cost savings subject to limits established in the contract. The contracting officer may require the contractor to provide periodic reporting, or other justification, or to require other steps (e.g., cost segregation) to ensure projected cost savings are being realized.

1843.7102 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 1852.243–71, Shared Savings, in all solicitations and contracts expected to exceed $1,000,000, except those awarded under FAR part 12, NRA and AO procedures, or the SBIR and STTR programs.

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1844.2—Consent to Subcontracts

Sec.
1844.204 Contract clauses.
1844.204–70 NASA contract clause.

AUTHORITY: 42 U.S.C. 2473(a)(1).

SOURCE: 62 FR 14023, Mar. 25, 1997, unless otherwise noted.

Subpart 1844.2—Consent to Subcontracts

1844.204 Contract clauses.

1844.204–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.244–70, Geographic Participation in the Aerospace Program, in all research and development solicitations and contracts of $500,000 or over that will be performed within the United States.

PART 1845—GOVERNMENT PROPERTY

Subpart 1845.1—General

Sec.
1845.107 Contract clauses.
1845.107–70 NASA solicitation provisions and contract clauses.

Subpart 1845.3—Authorizing the Use and Rental of Government Property

1845.301–71 Use of Government property for commercial work.

1845.302 Use of Government property on contracts with foreign governments or international organizations.

Subpart 1845.4 [Reserved]

Subpart 1845.5—Support Government Property Administration

1845.501–70 General.
1845.503–70 Delegations of property administration and plant clearance.
1845.505–70 Responsibilities of the property administrator.
1845.506–70 Responsibilities of the plant clearance officer.

Subpart 1845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1845.604 Restrictions on purchase or retention of contractor inventory.
1845.606–70 Contractor's approved scrap procedure.
1845.607 Scrap.
1845.607–1 General.
1845.607–170 Contractor's approved scrap procedure.
1845.607–2 Recovering precious metals.
1845.610 Sale of surplus contractor inventory.
1845.610–4 Contractor inventory in foreign countries.

Subpart 1845.71—Forms Preparation

1845.7101 Instructions for preparing NASA Form 1018.
1845.7101–1 Property classification.
1845.7101–2 Transfers of property.
1845.7101–3 Unit acquisition cost.
1845.7101–4 Types of deletions from contractor property records.
1845.7101–5 Contractor's privileged financial and business information.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 36722, July 9, 1997, unless otherwise noted.

Subpart 1845.1—General

1845.107 Contract clauses.

1845.107–70 NASA solicitation provisions and contract clauses.

(a)(1) The contracting officer shall insert the clause at 1852.245–70, Contractor Requests for Government-Provided Property, in cost reimbursement solicitations and contracts.

(2) Use the clause with its Alternate I when the center Supply and Equipment Management Officer (SEMO) consents to permit the contractor to screen Government inventory for available property in lieu of contractor acquisition of new items.

(b)(1) The contracting officer shall insert the clause at 1852.245–71, Installation—Accountable Government Property, in solicitations and contracts when Government property is to be made available to a contractor working on a NASA installation, and the Government will maintain accountability for the property. The contracting officer shall list in the clause the applicable property user responsibilities. For purposes of this clause, NASA installations include local off-site buildings owned or leased by NASA.

(2) Use of this clause is subject to the SEMO's concurrence that adequate Government property management resources are available for oversight of the property in accordance with all applicable NASA installation property management directives.

(3) The contracting officer shall identify, in the contract, the nature, quantity, and acquisition cost of the property and make it available on a nocharge basis.

(4) The contracting officer shall use the clause with its Alternate I if the SEMO requests that the contractor be restricted from use of the center central receiving facility for the purposes of receiving contractor-acquired property.

(5) For contractors with both onsite and offsite performance requirements, contracting officers shall list Government property provided for offsite use separately in the contract. This Government property is furnished under FAR 52.245–1, Government Property, and remains accountable to the contractor during its use on the contract. This Government property is not subject to the clause at 1852.245–71, Installation—Accountable Government Property. The contracting officer shall address any specific maintenance considerations (*e.g.*, requiring or precluding use of an installation calibration or repair facility) elsewhere in the contract.

(c) The contracting officer shall insert the clause at 1852.245–72, Liability for e Government Property Furnished for Repair or Other Services, in fixed-price, time-and-material, and labor-

hour solicitations and contracts (except for experimental, developmental, or research work with educational or nonprofit institutions, where no profit is contemplated) for repair, modification, rehabilitation, or other servicing of Government property, if such property is to be furnished to a contractor for that purpose and no other Government property is to be furnished. The contracting officer shall not require additional insurance under the clause unless the circumstances clearly indicate advantages to the Government.

(d) The contracting officer shall insert the clause at 1852.245–73, Financial Reporting of NASA Property in the Custody of Contractors, in cost reimbursement solicitations and contracts unless all property to be provided is subject to the clause at 1852.245–71, Installation—Accountable Government Property. The clause shall also be included in other types of solicitations and contracts when it is known at award that property will be provided to the contractor or that the contractor will acquire property title to which will vest in the Government prior to delivery.

(e) The contracting officer shall insert the clause at 1852.245–74, Identification and Marking of Government Property, in solicitations and contracts that—

(1) Include the clause at FAR 52.245–1; or

(2) Require the delivery of supplies.

(f) The contracting officer shall insert the clause at 1852.245–75, Property Management Changes, in solicitations and contracts that provide for progress payments or include any of the property clauses prescribed in FAR Part 45.

(g) The contracting officer shall insert the clause at 1852.245–76, List of Government Property Furnished Pursuant to FAR 52.245–1, in solicitations and contracts when the contractor is to be accountable under the contract for Government property.

(h) The contracting officer shall insert the clause at 1852.245–77, List of Government Property Furnished Pursuant to FAR 52.245–2, in solicitations and contracts containing the clause at 52.245–2, Government Property Installation Operation Services. In addition, the contracting officer shall insert the following language in the blanks in paragraph (e) of the clause at 52.245–2:

''The Government property provided under this clause is identified in clause 1852.245–77 of this contract.''

(i) The contracting officer shall insert the clause at 1852.245–78, Physical Inventory of Capital Personal Property, in cost reimbursement and fixed-price solicitations and contracts that provide Government property.

(j) The contracting officer shall insert the clause at 1852.245–79, Records and Disposition Reports for Government Property with Potential Historic or Significant Real Value, in solicitations and contracts when, after consultation with the center Historic Preservation Officer, it is determined that the items acquired for or produced by the contract are likely to have historic significance or increased value due to their use in support of NASA projects and programs.

(k)(1) The contracting officer shall insert the provision at 1852.245–80, Government Property Management Information, in solicitations when it is known, or there is a reasonable chance, that Government property will be provided to the contractor for contract performance.

(2) The contracting officer shall use the provision with Alternate 1 when there are sufficient time and resources to allow prospective contractors the opportunity to inspect the property.

(l) The contracting officer shall insert the provision at 1852.245–81, List of Available Government Property, in solicitations when Government property will be made available for contract performance.

(m) The contracting officer shall insert the clause at 1852.245–82, Occupancy Management Requirements, in solicitations and contracts that require performance on, or in, any NASA Center, Installation, facility or other NASA owned property.

(n) The contracting officer shall insert the clause at 1852.245–83 Real Property Management Requirements, in solicitations and contracts for acquisition, construction, modification (including when the modification is a consequence of another approved task, *e.g.*, installation of telephonic or local area

network equipment), demolition, or management of real property.

[76 FR 2004, Jan. 12, 2011]

Subpart 1845.3—Authorizing the Use and Rental of Government Property

SOURCE: 76 FR 2005, Jan. 12, 2011, unless otherwise noted.

1845.301–71 Use of Government property for commercial work.

(a) The coverage at FAR 45.3 applies to a contractor's commercial (any non-Government) use of any NASA equipment.

1845.302 Use of Government property on contracts with foreign governments or international organizations.

(a) NASA contracting officers will recover a fair share of the cost of Government property if such property is used in performing services or manufacturing articles for foreign countries or for international organizations.

Subpart 1845.4 [Reserved]

Subpart 1845.5—Support Government Property Administration

SOURCE: 76 FR 2005, Jan. 12, 2011, unless otherwise noted.

1845.501–70 General.

(b) When the Industrial Property Officer or Property Administrator determines that the contractor's proposed systems, standards and practices for the management of Government property are inadequate to manage Government property, the Contracting Officer should: (1) Require the contractor to provide a written revision that addresses the determination of the Industrial Property Officer or Property Administrator.

1845.503–70 Delegations of property administration and plant clearance.

(e) Under the clause at 1852.245–71, Installation-Accountable Government Property, property is managed by center logistics functions using NASA internal policy and procedural guidance, except—

(1) When contractors are provided or are allowed the use of property that is not governed by that procedural guidance, management of that property is governed by the applicable FAR clause.

(2) When the contractor is responsible for performance of any segment of a property system under a FAR property clause, then property administration and plant clearance are required.

1845.505–70 Responsibilities of the property administrator.

(c) When the property administrator determines that all or a portion of a contractor's property management practices and processes do not afford sufficient protection against loss, damage or destruction of Government property:

(1) The property administrator shall increase surveillance to prevent, to the extent possible, any loss, damage, or destruction of Government property; and

(2) Advise the contracting officer of any known or reported incidence of loss, damage or destruction identified during any period in which the contracting officer has revoked the Government's acceptance of risk.

(d) The property administrator shall review records and the results of contractor actions to identify any and all incidence where the contractor fails to report property no longer required for performance for periods longer than called for in their standards and practices.

1845.506–70 Responsibilities of the plant clearance officer.

When plant clearance is not delegated to DOD, NASA plant clearance officers shall be responsible for—

(a) Providing the contractor with instructions and advice regarding the proper preparation of inventory schedules;

(b) Accepting or rejecting inventory schedules;

(c) Conducting or arranging for inventory verification;

(d) Initiating prescribed screening and effecting resulting actions;

(e) Final plant clearance of contractor inventory;

(f) Pre-inventory scrap determinations, as appropriate;

(g) Evaluating the adequacy of the contractor's procedures for property disposal and providing feedback to the Property Administrator regarding the contractor's performance in property disposal activities;

(h) Determining the method of disposal;

(i) Surveillance of any contractor conducted sales;

(j) Accounting for all contractor inventory reported by the contractor;

(k) Advising and assisting, as appropriate, the contractor, the Supply and Equipment Management Officer (SEMO) and other Federal agencies in all actions relating to the proper and timely disposal of contractor inventory;

(l) Approving the method of sale, evaluating bids, and approving sale prices for any contractor-conducted sales; and

(m) Recommending the reasonableness of selling expenses related to any contractor-conducted sales.

Subpart 1845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1845.604 Restrictions on purchase or retention of contractor inventory.

(1) No contractor may sell contractor inventory to persons known by it to be NASA or DOD personnel who have been engaged in administering or terminating NASA contracts.

(2)(i) The contractor's or subcontractor's authority to approve the sale, purchase, or retention of Government property on a contract which is excess to needs after Government reutilization screening at less than cost by a subcontractor, and the subcontractor's authority to sell, purchase, or retain such property at less than cost with the approval of the contractor or next higher-tier subcontractor does not include authority to approve—

(A) A sale by a subcontractor to the contractor, the next higher-tier subcontractor, or their affiliates; or

(B) A sale, purchase, or retention by a subcontractor affiliated with the contractor or next higher-tier subcontractor.

(ii) Each excluded sale, purchase, or retention requires the written approval of the plant clearance officer.

1845.606–70 Contractor's approved scrap procedure.

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not processed under this section.

(d) Property in scrap condition, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of FAR Part 45 and NFS 1845.

[76 FR 2006, Jan. 12, 2011]

1845.607 Scrap.

1845.607–1 General.

1845.607–170 Contractor's approved scrap procedure.

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not processed under this section.

(b)–(c) [Reserved]

(d) Property in scrap condition, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of FAR part 45 and 1845.

[62 FR 36722, July 9, 1997, as amended at 69 FR 44610, July 27, 2004]

1845.607–2 Recovering precious metals. (NASA supplements paragraph (b)).

(b) Silver, gold, platinum, palladium, rhodium, iridium, osmium, and ruthenium; scrap bearing such metals; and items containing recoverable quantities of them shall be reported to the Defense Reutilization and Marketing Service, DRMS-R, Federal Center, Battle Creek, MI 49017–3092, for instructions regarding disposition.

1845.610 Sale of surplus contractor inventory.

1845.610–4 Contractor inventory in foreign countries.

NASA procedures for disposal are in NPR 4300.1, NASA Personal Property Disposal Procedures and Guidelines.

[62 FR 36722, July 9, 1997, as amended at 65 FR 58932, Oct. 3, 2000; 69 FR 44610, July 27, 2004]

Subpart 1845.71—Forms Preparation

1845.7101 Instructions for preparing NASA Form 1018.

NASA must account for and report assets in accordance with 31 U.S.C. 3512 and 31 U.S.C. 3515, Federal Accounting Standards, and Office of Management and Budget (OMB) instructions. Since contractors maintain NASA's official records for its assets in their possession, NASA must obtain periodic data from those records to meet these requirements. Changes in Federal Accounting Standards and OMB reporting requirements may occur from year to year, requiring contractor submission of supplemental information with the NASA Form (NF) 1018. The specific Statements of Federal Financial Accounting Standards (SFFAS) to be used for property records are SFFAS No. 3 ''Accounting for Inventory and Related Property'', SFFAS No. 6 ''Accounting for Property, Plant and Equipment'', SFFAS No. 10 ''Accounting for Internal Use Software'', and SFFAS No. 11 ''Amendments to PP&E: Definitions'' issued by the Federal Accounting Standards Advisory Board. Classifications of property, related costs to be reported, and other reporting requirements are discussed in this subpart. NF 1018 (see 1853.3) provides critical information for NASA financial statements and property management. Accuracy, completeness, and timeliness of the report are critical to many aspects of NASA's operations.

[68 FR 62024, Oct. 31, 2003]

1845.7101–1 Property classification.

(a) *General.* (1) Contractors shall report costs in the classifications on NF 1018, as described in this section. The cost of heritage assets and obsolete property will be reported on the NF 1018 under the appropriate classification. Supplemental reporting may also be required.

(2)(i) Heritage assets are property, plant and equipment that possess one or more of the following characteristics:

(A) Historical or natural significance;

(B) Cultural, educational or artistic importance; or

(C) Significant architectural characteristics.

(ii) Examples of NASA heritage assets include buildings and structures designated as National Historic Landmarks as well as aircraft, spacecraft and related components on display to enhance public understanding of NASA programs. Heritage assets which serve both a heritage and government operation function are considered multi-use when the predominant use is in general government operations. Multi-use heritage assets will not be considered heritage assets for NF 1018 supplemental reporting purposes.

(3) Obsolete property is property for which there are no current plans for use in its intended purpose (i.e., it no longer provides service to NASA operations). Examples of obsolete property are items in configurations which are no longer required or used by NASA or items held for engineering evaluation purposes only. NASA may have approved the retention of these items for programmatic reasons even though they have no current plans for use.

(b) *Land.* Includes costs of land and improvements to land. Contractors shall report land with a unit acquisition cost of $100,000 or more.

(c) *Buildings.* Includes costs of buildings, improvements to buildings, and fixed equipment required for the operation of a building which is permanently attached to and a part of the building and cannot be removed without cutting into the walls, ceilings, of floors. Contractors shall report buildings with a unit acquisition cost of $100,000 or more. Examples of fixed equipment required for functioning of a building include plumbing, heating and lighting equipment, elevators, central

air conditioning systems, and built-in safes and vaults.

(d) *Other Structures and Facilities*. Includes costs of acquisitions and improvements of real property (i.e. structures and facilities other than buildings); for example, airfield pavements, harbor and port facilities, power production facilities and distribution systems, reclamation and irrigation facilities, flood control and navigation aids, utility systems (heating, sewage, water and electrical) when they serve several buildings or structures, communication systems, traffic aids, roads and bridges, railroads, monuments and memorials, and nonstructural improvements such as sidewalks, parking areas, and fences. Contractors shall report other structures and facilities with a unit acquisition cost of $100,000 or more and a useful life of two years or more.

(e) *Leasehold improvements*. Includes NASA-funded costs of improvements to leased buildings, structures, and facilities, as well as easements and right-of-way, where NASA is the lessee or the cost is charged to a NASA contract. Contractors shall report leasehold improvements with a unit acquisition cost of $100,000 or more and a useful life of two years or more.

(f) *Construction in progress*. Includes costs of work in process for the construction of Buildings, Other Structures and Facilities, and Leasehold Improvements to which NASA has title, regardless of value.

(g) *Equipment*. Includes costs of commercially available personal property capable of stand-alone use in manufacturing supplies, performing services, or any general or administrative purpose (for example, machine tools, furniture, vehicles, computers, software, test equipment, including their accessory or auxiliary items). Software integrated into and necessary to operate another item of Government property is considered to be an auxiliary item (see FAR 45.501) and should be considered part of the item of which it is an integral part. Other software to which NASA has title shall be classified as an individual item of equipment for reporting purposes if it has a useful life of 2 years or more and acquisition cost of $1,000,000 or more (also see 1845.7101–3(g)). Enhancement costs for existing software should be added to the software acquisition cost if the enhancement results in significant additional capability beyond that for which the software was originally developed (i.e., a capability that was not included in the original software specifications, the total cost of the enhancement is $1,000,000 or more, or the expected useful life of the enhanced software is 2 years or more). Software licenses are excluded. Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of $100,000 or more and a useful life of two years or more; and

(2) All other items.

(h) *Special tooling*. Includes costs of equipment and manufacturing aids (and their components and replacements) of such a specialized nature that, without substantial modification or alteration, their use is limited to development or production of particular supplies or parts, or performance of particular services (see FAR 45.101). Examples include jigs, dies, fixtures, molds, patterns, taps and gauges. Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of $100,000 or more and a useful life of two years or more; and

(2) All other items.

(i) *Special test equipment*. Includes costs of equipment used to accomplish special purpose testing in performing a contract, and items or assemblies of equipment (see FAR 45.101). Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of $100,000 or more and a useful life of two years or more; and

(2) All other items.

(j) *Material*. Includes costs of NASA-owned property held in inventory regardless of whether or not it is unique to NASA programs, that may become a part of an end item or be expended in performing a contract. Examples include raw and processed material, spares, parts, assemblies, small tools and supplies. Material that is part of work-in-process is not included. Contractors shall report the amount for all

Materials in inventory, regardless of unit acquisition cost.

(k) *Agency-Peculiar Property*. Includes costs of completed items, unique to NASA aeronautical and space programs, which are capable of stand-alone operation. Examples include research aircraft, reusable space vehicles, ground support equipment, prototypes, and mock-ups. The amount of property, title to which vests in NASA as a result of progress payments to fixed price subcontractors, shall be included to reflect the pro rata cost of undelivered agency-peculiar property. Completed end items not related to the International Space Station or the Space Shuttle program which otherwise meet the definition of Agency-Peculiar Property, and are destined for permanent operation in space, such as satellites and space probes, shall not be reported. Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of $100,000 or more and a useful life of two years or more; and

(2) All other items.

(l) *Contract Work-in-Process*. Work-in-process (WIP) consists of property items under construction (i.e., not complete). It includes costs of all work-in-process regardless of value, and excludes costs of completed items reported in other categories. While the costs of WIP for International Space Station and Space Shuttle components should be included as WIP, satellites and space probes and their components should be excluded from WIP as those items will be accounted for by NASA.

[65 FR 54814, Sept. 11, 2000, as amended at 65 FR 82297, Dec. 28, 2000; 66 FR 41806, Aug. 9, 2001; 67 FR 68534, Nov. 12, 2002; 68 FR 62024, Oct. 31, 2003]

1845.7101–2 Transfers of property.

A transfer is a change in accountability between and among prime contracts, NASA Centers, and other Government agencies (e.g., between contracts of the same NASA Center, contracts of different NASA Centers, a contract of one NASA Center to another, a NASA Center to a contract of another NASA Center, and a contract to another Government agency or its contract). To enable NASA to properly control and account for all transfers, they shall be adequately documented. Adequate documentation includes the appropriate dollar amount of the asset(s) transferred (as prescribed in 1845.7101–3) and the formal, signed NASA or contractor authorization approving the transfer. In addition, procurement, property, and financial organizations at NASA Centers must effect all transfers of accountability, although physical shipment and receipt of property may be made directly by contractors. The procedures described in this section shall be followed to provide an administrative and audit trail, even if property is physically shipped directly from one contractor to another. Property shipped between September 1 and September 30, inclusively, shall be accounted for and reported by the shipping contractor, regardless of the method of shipment, unless written evidence of receipt at destination has been received. Repairables provided under fixed price repair contracts that include the clause at 1852.245–72, Liability for Government Property Furnished for Repair or Other Services, remain accountable to the cognizant NASA Center and are not reportable on NF 1018; repairables provided under a cost-reimbursement contract, however, are accountable to the contractor and reportable on NF 1018. All materials provided to conduct repairs are reportable, regardless of contract type.

(a) *Approval and notification*. The contractor must obtain approval of the contracting officer or designee for transfers of property off the prime contract before shipment. Each shipping document must be signed by the contracting officer or designee demonstrating such approval. Each shipping document must contain contract numbers, shipping references, property classifications in which the items are recorded (including Federal Supply Classification group (FSC) codes for equipment), unit acquisition costs (as defined in 1845.7101–3, Unit Acquisition Cost), original Government acquisition dates for items with a unit acquisition cost of $100,000 or more and a useful life of two years or more, and any other appropriate identifying or descriptive data. Where the DD Form 250, Material Inspection and Receiving Report, is

used, the FSC code will be part of the national stock number (NSN) entered in Block 16 or, if the NSN is not provided, the FSC alone shall be shown in Block 16. The original Government acquisition date shall be shown in Block 23, by item. Other formats, such as the DD Form 1149, Requisition and Invoice/Shipping Document, should be clearly annotated with the required information. Unit acquisition costs shall be obtained from records maintained pursuant to FAR part 45 and this part 1845, or, for uncompleted items where property records have not yet been established, from such other record systems as are appropriate such as manufacturing or engineering records used for work control and billing purposes. Shipping contractors shall furnish a copy of the formally approved shipping document to the cognizant property administrator. Shipping and receiving contractors shall promptly submit copies of shipping and receiving documents to the Center Deputy Chief Financial Officer, Finance, responsible for their respective contracts when accountability for NASA property is transferred to, or received from, other contracts, contractors, NASA Centers, or Government agencies.

(b) *Reclassification*. If property is transferred to another contract or contractor, the receiving contractor shall record the property in the same property classification and amount appearing on the shipping document. For example, when a contractor receives an item from another contractor that is identified on the shipping document as equipment, but that the recipient intends to incorporate into special test equipment, the recipient shall first record the item in the equipment account and subsequently reclassify it as special test equipment. Reclassification of equipment, special tooling, special test equipment, or agency-peculiar property requires prior approval of the contracting officer or a designee.

(c) *Incomplete documentation*. If contractors receive transfer documents having insufficient detail to properly record the transfer (*e.g.*, omission of property classification, FSC, unit acquisition cost, Government acquisition date, required signatures, *etc.*) they shall request the omitted data directly from the shipping contractor or through the property administrator. The contracting officer shall assist the Government Property Administrator and the receiving contractor to obtain all required information for the receiving contractor to establish adequate property records.

[65 FR 54815, Sept. 11, 2000, as amended at 66 FR 41806, Aug. 9, 2001; 67 FR 68534, Nov. 12, 2002; 68 FR 62025, Oct. 31, 2003; 76 FR 2006, Jan. 12, 2011]

1845.7101–3 Unit acquisition cost.

(a) The unit acquisition cost shall include all costs incurred to bring the property to a form and location suitable for its intended use. The following is representative of the types of costs that shall be included, when applicable:

(1) Amounts paid to vendors or other contractors.

(2) Transportation charges to the point of initial use.

(3) Handling and storage charges.

(4) Labor and other direct or indirect production costs (for assets produced or constructed).

(5) Engineering, architectural, and other outside services for designs, plans, specifications, and surveys.

(6) Acquisition and preparation costs of buildings and other facilities.

(7) An appropriate share of the cost of the equipment and facilities used in construction work.

(8) Fixed equipment and related installation costs required for activities in a building or facility.

(9) Direct costs of inspection, supervision, and administration of construction contracts and construction work.

(10) Legal and recording fees and damage claims.

(11) Fair values of facilities and equipment donated to the Government.

(b) Acquisition cost shall include, where appropriate, for contractor acquired property, related fees, or a *pro rata* portion of fees, paid by NASA to the contractor. Situations where inclusion of fees in the acquisition cost would be appropriate are those in which the contractor designs, develops, fabricates or purchases property for NASA and part of the fees paid to the contractor by NASA are related to that effort.

(c) Acquisition cost shall be developed using actual costs to the greatest extent possible, especially costs directly related to fabrication such as labor and materials. Where estimates are used, there must be a documented methodology based on a historical basis. All acquisition costs shall be properly documented, supported and retained. Supporting documentation shall be made available upon request.

(d) The use of weighted average methodologies is acceptable for valuation of Material.

(e) Contractors shall report unit acquisition costs using records that are part of the prescribed property or financial control system as provided in this section. Fabrication costs shall be based on approved systems or procedures and include all direct and indirect costs of fabrication.

(f) Only modifications that improve an item's capacity or extend its useful life two years or more and that cost $100,000 or more shall be reported on the NF 1018 on the $100,000 & Over line. The costs of any other modifications, excluding routine maintenance, will be reported on the Under $100,000 line. If an item's original unit acquisition cost is less than $100,000, but a single subsequent modification costs $100,000 or more, that modification only will be reported as an item $100,000 or more on subsequent NF 1018s. The original acquisition cost of the item will continue to be included in the under $100,000 total. The quantity for the modified item will remain ''1'' and be reported with the original acquisition cost of the item. If an item's acquisition cost is reduced by removal of components so that its remaining acquisition cost is under $100,000, it shall be reported as under $100,000.

(g) Software acquisition costs include software costs incurred up through acceptance testing and material internal costs incurred to implement the software and otherwise make the software ready for use. Costs incurred after acceptance testing are excluded. License, maintenance, training, and data conversion costs are also excluded. If the software is purchased as part of a package, the costs will need to be segregated in such manner as to ensure that the excluded costs (maintenance, training, etc.) are not reported as part of the software's acquisition cost. Enhancement costs for existing software should be added to the acquisition cost if the enhancement results in significant additional capability beyond that for which the software was originally developed (i.e. a capability that was not included in the original software specifications), the total cost of the enhancement is $1,000,000 or more, and the expected useful life of the enhanced software is 2 years or more. Include the same types of cost as indicated above under new software. Costs incurred solely to repair a design flaw or perform minor upgrades should not be included.

(h) The computation of work in process (WIP) shall include all direct and indirect costs of fabrication, including associated systems, subsystems, and spare parts and components furnished or acquired and charged to work in process pending incorporation into a finished item. These types of items make up what is sometimes called production inventory and include programmed extra units to cover replacement during the fabrication process (production spares). Also included are deliverable items on which the contractor or a subcontractor has begun work, and materials issued from inventory. The computation of WIP shall incorporate the other requirements for unit acquisition cost as outlined in paragraphs (a) through (e) of this section. In addition, acquisition cost of property furnished by the Government, which has been incorporated in the property item under construction or in process of fabrication, should be included. Do not include costs for operation or repairing existing completed property items. Once the property is complete, include all the costs outlined above in its acquisition value in the property record. The WIP values are inception to date until such time as the WIP is completed. It does not include future costs.

[65 FR 54815, Sept. 11, 2000, as amended at 66 FR 41806, Aug. 9, 2001; 67 FR 68534, Nov. 12, 2002; 68 FR 62025, Oct. 31, 2003]

1845.7101–4 Types of deletions from contractor property records.

Contractors shall report the types of deletions from contract property records as described in this section.

(a) *Lost, damaged or destroyed.* Deletion amounts that result from relief from responsibility under FAR 45.503 granted during the reporting period.

(b) *Transferred in Place.* Deletion amounts that result from transfer of property to a follow-on prime contract or other prime contract with the same contractor.

(c) *Transferred to NASA Center accountability.* Deletion amounts that result from transfer of accountability to the NASA Center responsible for the contract, whether or not items are physically moved.

(d) *Transferred to another NASA Center.* Deletion amounts that result from transfer of accountability to a NASA Center other than the one responsible for the contract, whether or not items are physically moved.

(e) *Transferred to another Government agency.* Deletion amounts that result from transfer of property to another Government agency.

(f) *Purchased at cost/returned for credit.* Deletion amounts that result from contractor purchase or retention of contractor acquired property as provided in FAR 45.605–1, or from contractor returns to suppliers under FAR 45.605–2.

(g) *Disposed of through plant clearance process.* Deletions other than transfers within the Federal Government, e.g., donations to eligible recipients, sold at less than cost, or abandoned/directed destruction, or trade-ins.

(h) *Other.* Types of deletion other than those reported in paragraph (a) through (g) of this section such as those resulting from reclassifications (e.g. from equipment to agency-peculiar property).

[65 FR 54816, Sept. 11, 2000, as amended at 66 FR 41806, Aug. 9, 2001; 67 FR 68535, Nov. 12, 2002]

1845.7101–5 Contractor's privileged financial and business information.

If a transfer of property between contractors involves disclosing costs of a proprietary nature, the contractor shall furnish unit acquisition costs only on copies of shipping documents sent to the shipping and receiving NASA Centers.

[65 FR 54816, Sept. 11, 2000, as amended at 66 FR 41806, Aug. 9, 2001]

PART 1846—QUALITY ASSURANCE

Subpart 1846.3—Contract Clauses

Sec.
1846.370 NASA contract clauses.

Subpart 1846.4—Government Contract Quality Assurance

1846.470 Contract clause.

Subpart 1846.6—Material Inspection and Receiving Reports

1846.670 Introduction.
1846.670–1 General.
1846.670–2 Applicability.
1846.670–3 Use.
1846.670–4 Multiple shipments.
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1846.671 Contract quality assurance on shipments between contractors.
1846.672 Preparing DD Forms 250 and 250c.
1846.672–1 Preparation instructions.
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1846.672–5 Invoice instructions.
1846.672–6 Packing list instructions.
1846.672–7 Receiving instructions.
1846.673 Distribution of DD Forms 250 and 250c.
1846.674 Contract clause.

AUTHORITY: U.S.C. 2473(c)(1).

SOURCE: 62 FR 14024, Mar. 25, 1997, unless otherwise noted.

Subpart 1846.3—Contract Clauses

1846.370 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.246–70, Mission Critical Space System Personnel Reliability Program, in solicitations and contracts involving critical positions designated in accordance with 14 CFR 1214.5, Mission Critical Space System Personnel Reliability Program.

(b) The contracting officer shall insert the clause at 1852.246–73, Human Space Flight Item, in solicitations and contracts for human space flight hardware and flight-related equipment if the highest available quality standards are necessary to ensure astronaut safety.

Subpart 1846.4—Government Contract Quality Assurance

1846.470 Contract clause.

The contracting officer may insert a clause substantially as stated at 1852.246–71, Government Contract Quality Assurance Functions, in solicitations and contracts to specify the location(s) of quality assurance functions.

Subpart 1846.6—Material Inspection and Receiving Reports

1846.670 Introduction.

1846.670–1 General.

(a) This Subpart contains procedures and instructions for use of the Material Inspection and Receiving Report (MIRR) (DD Form 250 series) and commercial shipping/packing lists used to evidence Government contract quality.

(b) MIRRs are used to document contract quality assurance (CQA), acceptance of supplies and services, and shipments. MIRRs are not used for—

(1) Shipments by subcontractors not made to the Government;

(2) Shipment of contractor inventory (see FAR 45.601); or

(3) Movement of Government property unless for original acquisition.

[62 FR 14024, Mar. 25, 1997, as amended at 69 FR 44610, July 27, 2004]

1846.670–2 Applicability.

(a) This subpart applies to all deliveries of supplies or services acquired by or for NASA except:

(1) Acquisitions under FAR part 13;

(2) Negotiated subsistence acquisitions; or

(3) Contracts for which the end item is a technical or scientific report.

(b) The DD Form 250 may be used for imprest fund purchases, purchase orders, delivery orders placed against Federal Supply Schedule contracts, delivery orders placed against indefinite-delivery contracts, or delivery orders placed against blanket purchase agreements, or when the purchasing, requisitioning, or ordering document provides for inspection and/or acceptance.

(c) When NASA provides CQA and/or acceptance services for non-NASA activities, the MIRR shall be prepared in accordance with the instructions of this subpart unless the contract specifies otherwise.

1846.670–3 Use.

The DD Form 250 is a multipurpose report used for—

(a) Providing evidence of CQA at origin or destination;

(b) Providing evidence of acceptance at origin or destination;

(c) Packing list documentation;

(d) Receiving;

(e) Shipping;

(f) Contractor invoice; and

(g) Contractor invoice support.

1846.670–4 Multiple shipments.

(a) If the ''shipped to,'' ''marked for,'' ''shipped from,'' ''CQA,'' and ''acceptance'' data are the same for more than one shipment made on the same day under the same contract in a single car, truck, or other vehicle, one MIRR shall be prepared to cover all such shipments.

(b) If the volume of the shipments precludes the use of a single car, truck, or other vehicle, a separate MIRR shall be provided for each vehicle.

[62 FR 14024, Mar. 25, 1997, as amended at 69 FR 44610, July 27, 2004]

1846.670–5 Forms.

(a) Contractors may obtain MIRR forms from the contracting office at no cost.

(b) Contractors may print forms, provided their format and dimensions are identical to the MIRR forms printed by the Government.

1846.671 Contract quality assurance on shipments between contractors.

(a) The supplier's commercial shipping document/packing list shall indicate performance of required CQA actions at subcontract level.

The following entries shall be made on the document/packing list:

Required CQA of items has been performed.

_____

(Signature of Authorized Government Representative)

_____

(Date)

_____

(Typed Name and Office)

(b) Distribution for Government purposes shall be one copy each—

(1) With shipment;

(2) For the Government representative at consignee (via mail); and

(3) For the Government representative at consignor.

1846.672 Preparing DD Forms 250 and 250c.

1846.672–1 Preparation instructions.

(a) General. (1) Dates shall utilize seven spaces consisting of the last two digits of the year, three-alpha month abbreviation, and two digits for the day (e.g., 96SEP24).

(2) Addresses shall consist of the name, street address/P.O. box, city, State, and ZIP code.

(3) The data entered in the blocks at the top of DD Form 250C shall be identical to the comparable entries in Blocks 1, 2, 3, and 6 of the DD Form 250.

(4) Overflow data of the DD Form 250 shall be entered in Block 16 or in the body of the DD Form 250c with block cross reference. Additional DD Form 250c sheets solely for continuation of Block 23 data shall not be numbered or distributed as part of the MIRR.

(b) *Classified information*. Classified information shall not appear on the MIRR, nor shall the MIRR be classified.

(c) *Block 1—PROC. INSTRUMENT IDEN. (CONTRACT)*. Enter the contract number, with its identifying center prefix, as contained in the contractual document, including any call/order number.

(d) *Block 2—SHIPMENT NO*. (1) The shipment number is a three-alpha character prefix and a four-character numeric or alpha-numeric serial number.

(i) The prefix shall be controlled and assigned by the prime contractor and shall consist of three alpha characters for each ''shipped from'' address (Block 11). The prefix shall be different for each ''Shipped From'' address and shall remain constant throughout the contract period.

(ii) The serial number for the first shipment under a prime contract from each ''shipped from'' address shall be 0001; subsequent shipments under that prime contract shall be consecutively numbered. Alpha-numerics shall be used when more than 9,999 numbers are required. Alpha-numerics shall be serially assigned, with the alpha in the first position, followed by the three-position numeric serial number. The alpha-numeric sequence shall be (the letters I and O shall not be used) A001 through A999 (10,001 through 10,999); B001 through B999 (11,001 through 11,999); to Z999. When this series is completely used, numbering shall revert to 0001.

(2) The shipment number of the initial shipment shall be reassigned when a ''replacement shipment'' is involved (see paragraph (r)(4)(iv) of this section).

(3) The prime contractor shall control deliveries and on the last shipment of the contract shall suffix the shipment number with a ''Z'' in addition to that required for line items (see Block 17). If the contract final shipment is from other than the prime contractor's plant, the prime contractor may elect

(i) To direct the subcontractor to suffix the ''Z'' or

(ii), On receipt of the subcontractor final shipment information, to correct the DD Form 250 covering the last shipment from the prime contractor's plant by adding a ''Z'' to that shipment number.

(e) *Block 3—DATE SHIPPED*. Enter the date the shipment is released to the carrier or the date of completion of services. If the shipment will be released after the date of CQA and/or acceptance, enter the estimated date of release. When the date is estimated, enter an ''E'' after it. Distribution of the MIRR shall not be delayed for entry of the actual shipping date. Reissurance of the MIRR is not required to show the actual shipping date.

(f) *Block 4—B/L TCN*. When applicable, enter the commercial or Government bill of lading number after ''B/L''; and the Transportation Control Number after ''TCN.''

(g) *Block 5—DISCOUNT TERMS*. (1) The Contractor may enter the discount in terms of percentages on all copies of the MIRR.

(2) When the MIRR is used as an invoice, see 1846.672–5.

(h) *Block 6—INVOICE*. (1) The contractor may enter the invoice number and actual or estimated date on all

copies of the MIRR. When the date is estimated, enter an ''E'' after the date. Do not correct MIRRs other than invoice copies to reflect the actual date of invoice submission.

(2) When the MIRR is used as an invoice, see 1846.672–5.

(i) *Block 7—PAGE/OF.* Consecutively number the pages comprising the MIRR. On each page, enter the total number of pages of the MIRR.

(j) *Block 8—ACCEPTANCE POINT.* Enter an ''S'' for origin or ''D'' for destination as specified in the contract as the point of acceptance. Enter an alphabetic ''O'' for other if the point of acceptance is not specified in the contract.

(k) *Block 9—PRIME CONTRACTOR.* Enter the code and address.

(l) *Block 10—ADMINISTERED BY.* Enter the code and address of the contracting office cited in the contract.

(m) *Block 11—SHIPPED FROM/CODE/FOB.* (1) Enter the code and address of the ''shipped from'' location. If identical to Block 9, enter ''See Block 9.''

(2) For performance of services that do not require delivery of items upon completion, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations or if identical to Block 9, enter ''See Block 9.''

(3) Enter on the same line and to the right of ''FOB'' an ''S'' for origin or ''D'' for destination as specified in the contract. Enter an alphabetic ''O'' if the FOB point cited in the contract is other than origin or destination.

(n) *Block 12—PAYMENT WILL BE MADE BY.* Enter the address of the payment office cited in the contract.

(o) *Block 13—SHIPPED TO/CODE.* Enter the code and address from the contract or shipping instructions.

(p) *Block 14—MARKED FOR/CODE.* Enter the code and address from the contract or shipping instructions.

(q) *Block 15—ITEM NO.* Enter the item number used in the contract. If four or fewer digits are used, position them to the left of the vertical dashed line. Where a six-digit identification is used, enter the last two digits to the right of the vertical dashed line.

(r) *Block 16—STOCK/PART NO./DESCRIPTION.* (1) Enter, as applicable, for each item, using single spacing between each line item, the following:

(i) The Federal Stock Number (FSN) or noncatalog number and, if applicable, prefix or suffix. When a number is not provided or it is necessary to supplement the number, include other identification such as the manufacturer's name or Federal Supply Code (as published in Cataloging Handbook H4–1), and part numbers. Additional part numbers may be shown in parentheses. Also enter the descriptive noun of the item nomenclature and, if provided, the Government-assigned management/material control code. In the case of equal-kind supply items, the first entry shall be the description without regard to kind (e.g., ''Resistor''). Below this description, enter the contract item number in Block 15 and stock/part number followed by the size or type in Block 16.

(ii) On the next printing line, if required by the contract for control purposes, enter the make, model, serial number, lot, batch, hazard indicator, and/or similar description.

(iii) On the next printing line, enter the FEDSTRIP requisition number(s) when provided in the contract or shipping instructions.

(2) For service items, enter the word ''SERVICE'' followed by a short description of less than 20 characters. Do not complete items 4, 13, and 14 when material is not shipped.

(3) For all contracts administered by the Defense Contract Management Command, with the exception of fast pay procedures, enter and complete the following:

Gross Shipping Wt. ____ (State weight in pounds only).

(4) Enter on the next line the following as appropriate (entries may be extended through Block 20). When entries apply to more than one item in the MIRR, enter them only once after the last item and reference the applicable item numbers.

(i) Enter in capital letters any special handling instructions/limits for material environmental control (e.g., temperature, humidity, aging, freezing, and shock).

(ii) When an FSN is required by, but not cited in, a contract and has not

been furnished by the Government, shipment may be made at the direction of the contracting officer. Enter the authority for the shipment.

(iii) When Government-furnished property (GFP) is included with or incorporated into the line item, enter ''GFP''.

(iv) When the shipment consists of replacements for supplies previously furnished, enter in capital letters ''REPLACEMENT SHIPMENT'' (see paragraph (s)(3) of this section for replacement indicators.)

(v) For items shipped with missing components, enter and complete the following: ''Item(s) shipped short of the following component(s): FSN or comparable identification _____, Quantity _____, Estimated Value _____, Authority _____.''

(vi) When shipment is made of components that were short on a prior shipment, enter and complete the following: ''These components were listed as shortages on Shipment Number _____, date shipped _____.''

(vii) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following: ''Return to _____, Quantity _____, Item _____, Ownership (Government/contractor).''

(viii) Enter shipping container number(s), the type, and the total number of the shipping container(s) included in the shipment.

(ix) The MIRR shall be used to record and report the waivers and deviations from contract specifications, including the source and authority for the waiver or deviation (e.g., the contracting office authorizing the waiver or deviation and the identification of the authorizing document).

(x) For shipments involving discount terms, enter ''DISCOUNT EXPEDITE'' in at least one-inch outline-type letters.

(xi) When test/evaluation results are a condition of acceptance and are not available before shipment, the following note shall be entered if the shipment is approved by the contracting officer: ''Note: Acceptance and payment are contingent upon receipt of approved test/evalution results.'' The contracting officer shall advise (A) the consignee of the results (approval/disapproval) and (B) the contractor to withhold invoicing pending attachment to its invoice of the approved test/evaluation results.

(xii) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of the four with shipment) or Alternative Release Procedure (ARP) origin acceptance (additional copy furnished to the Quality Assurance Representative (QAR)) shall be identified by entering ''PAYMENT COPY'' in approximately one-half-inch outline-type letters with ''FORWARD TO BLOCK 12 ADDRESS'' in approximately one-quarter-inch letters immediately below. Do not obliterate any other entries.

(xiii) A double line shall be drawn completely across the form following the last entry.

(s) *Block 17—QUANTITY SHIP/REC'D.* (1) Enter the quantity shipped, using the unit of measure indicated in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(2) Enter a ''Z'' below the first digit of the quantity when the total quantity of the item is delivered, including variations within contract terms; and all shortages on items previously shipped short are delivered.

(3) If a replacement shipment is involved, enter below the first digit of the quantity the letter ''A'' top designate first replacement, ''B'' for second replacement, and so forth. The final shipment indicator ''Z'' shall not be used when a final line item shipment is replaced.

(t) *Block 18 UNIT.* Enter the abbreviation of the unit of measure indicated in the contract for payment. When a second unit of measure is indicated in the contract for purposes other than payment or is used for shipping purposes, enter the abbreviation of the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL-STD-129, Marking for Shipping and Storage.

(u) *Block 19—UNIT PRICE.* Enter the unit price on all NASA copies whenever the MIRR is used for voucher or receiving purposes.

(v) *Block 20—AMOUNT*. Enter the extended amount when the unit price is entered in Block 19.

(w) *Block 21—CONTRACT QUALITY ASSURANCE*. The words ''conform to contract'' contained in the printed statements in Blocks A and B relate to contract obligations pertaining to quality and to the quantity of the items on the report. The statements shall not be modified. Notes taking exception shall be entered in Block 16 or on attached supporting documents with block cross reference.

(1) ''*A. ORIGIN.*''

(i) The authorized Government representative shall—

(A) Place an ''X'' when applicable in the appropriate CQA and/or acceptance box(es) to evidence origin CQA and/or acceptance. When the contract requires CQA at destination in addition to origin CQA, an asterisk shall be entered at the end of the statement and an explanatory note in Block 16;

(B) Sign and date; and

(C) Enter the typed, stamped, or printed name of the signer and office code.

(2) ''*B. DESTINATION.*''

(i) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(ii) When acceptance of CQA and acceptance are at destination, the authorized Government representative shall—

(A) Place an ''X'' in the appropriate box(es);

(B) Sign and date; and

(C) Enter the typed, stamped, or printed name of the signer and office code.

(x) *Block 22—RECEIVER'S USE*. This block shall be used by the receiving authority (Government or contractor) to denote receipt, quantity, and condition. The receiving activity shall enter in this block the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

(y) *Block 23—CONTRACTOR USE ONLY*. This block is provided and reserved for contractor use.

1846.672–2 Consolidated shipments.

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single destination on a single bill of lading, the applicable DD Forms 250 may be prepared at the time of CQA or acceptance prior to the time of actual shipment (see Block 3).

1846.672–3 Multiple consignee instructions.

The contractor may prepare one MIRR when the identical item(s) of a contract is to be shipped to more than one consignee, with the same or varying quantities, and the shipment requires origin acceptance. Prepare the MIRR using the procedures in this subpart with the following changes:

(a) Blocks 2, 4, 13, and, if applicable, 14—Enter ''See Attached Distribution List.''

(b) Block 15—The contractor may group item numbers for identical stock/part number and description.

(c) Block 17—Enter the ''total'' quantity shipped by item or, if applicable, grouped identical items.

(d) Use the DD Form 250c to list each individual ''Shipped To'' and ''Marked For'' with—

(1) Code(s) and complete shipping address and a sequential shipment number for each;

(2) Item number(s);

(3) Quantity;

(4) The FEDSTRIP requisition number and quantity for each when provided in the contract or shipping instructions; and

(5) If applicable, bill of lading number and mode of shipment code.

1846.672–4 Correction instructions.

When, because of errors of omissions, it is necessary to correct the MIRR after distribution, it shall be revised by correcting the original master and distributing the corrected form. The corrections shall be made as follows:

(a) Circle the error and place the corrected information in the same block. If space is limited, enter the corrected information in Block 16, referencing the error page and block.

(b) When corrections are made to Blocks 15 and 17, enter the words ''*CORRECTIONS HAVE BEEN*

VERIFIED'' on page 1. The authorized Government representative shall date and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(c) MIRRs shall not be corrected for Block 19 and 20 entries.

(d) Clearly mark pages of the MIRR requiring correction with the words ''*CORRECTED COPY*'', avoiding obliteration of any other entries. Even though corrections are made on continuation sheets only, also mark page 1 ''*CORRECTED COPY*''.

(e) Page 1 and only those continuation pages marked ''*CORRECTED COPY*'' shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

1846.672–5 Invoice instructions.

The Government encourages, but does not require, contractors to use copies of the MIRR as an invoice in lieu of a commercial form. If the MIRR is used as an invoice, four copies shall be prepared and forwarded to the payment office as follows:

(a) Complete Blocks 5, 6, 19, and 20.

(b) Mark, in letters approximately one inch high, the first copy ''*ORIGINAL INVOICE*'' and the remaining three copies ''*INVOICE COPY*''.

(c) Forward the four copies to the payment office (Block 12 address).

1846.672–6 Packing list instructions.

Copies of the MIRR may be used as a packing list. The packing list copies shall be in addition to the copies of the MIRR required for distribution (see 1846.673) and shall be marked ''PACKING LIST''.

1846.672–7 Receiving instructions.

When the MIRR is used for receiving purposes, procedures shall be as prescribed by local directives. If acceptance or CQA and acceptance of supplies are required upon arrival at destination, see Block 21B for instructions.

1846.673 Distribution of DD Forms 250 and 250c.

(a) DD Forms 250 and 250c shall be distributed in accordance with installation procedures.

(b) The contractor is responsible for distributing DD Forms 250 and 250c in accordance with the provisions of the contract or instructions of the contracting officer.

1846.674 Contract clause.

The contracting officer shall insert the clause at 1852.246–72, Material Inspection and Receiving Report, in solicitations and contracts, except those using simplified acquisition procedures or where the only deliverable items are technical or scientific reports. Insert the number of copies to be prepared. Paragraph (a) may be changed to specify advance copies or separate distribution of the DD Form 250.

PART 1847—TRANSPORTATION

Subpart 1847.3—Transportation in Supply Contracts

Sec.
1847.305 Solicitation provisions, contract clauses, and transportation factors.
1847.305–70 NASA contract clauses.

Subpart 1847.70—Protection of the Florida Manatee

1847.7001 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14028, Mar. 25, 1997, unless otherwise noted.

Subpart 1847.3—Transportation in Supply Contracts

1847.305 Solicitation provisions, contract clauses, and transportation factors.

1847.305–70 NASA contract clauses.

(a) The contracting officer may insert a clause substantially as stated at 1852.247–72, Advance Notice of Shipment, in solicitations and contracts when the f.o.b. point is destination and special Government assistance is required in the delivery or receipt of the items.

(b) The contracting officer shall insert a clause substantially as stated at 1852.247–73, Bills of Lading, in f.o.b. origin solicitations and contracts.

[62 FR 14028, Mar. 25, 1997, as amended at 67 FR 38908, June 6, 2002]

Subpart 1847.70—Protection of the Florida Manatee

1847.7001 Contract clause.

The contracting officer shall insert the clause at 1852.247–71, Protection of the Florida Manatee, in solicitations and contracts when deliveries or vessel operations, dockside work, or disassembly functions under the contract will involve use of waterways inhabited by manatees. The clause shall also be included in applicable subcontracts (including vendor deliveries).

PART 1849—TERMINATION OF CONTRACTS

Subpart 1849.5—Contract Termination Clauses

Sec.
1849.505 Other termination clause.
1849.505–70 NASA contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14030, Mar. 25, 1997, unless otherwise noted.

Subpart 1849.5—Contract Termination Clauses

1849.505 Other termination clause.

1849.505–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.249–72, Termination (Utilities), in all solicitations and contracts for utilities services.

PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

Subpart 1850.1—Extraordinary Contractual Actions

Sec.
1850.102 Delegation of and limitations of exercise of authority.
1850.102–2 Contract adjustment boards.
1850.103 Contract adjustments.
1850.103–5 Processing cases.
1850.103–570 Submission of request to the Contract Adjustment Board.
1850.103–6 Disposition.
1850.103–670 Implementation of the Contract Adjustment Board's decision.
1850.104 Residual powers.
1850.104–3 Special procedures for unusually hazardous or nuclear risks.
1850.104–370 Subcontractor indemnification requests.
1850.104–70 Lead NASA installation.

SOURCE: 76 FR 72328, Nov. 23, 2011, unless otherwise noted.

Subpart 1850.1—Extraordinary Contractual Actions

1850.102 Delegation of and limitations of exercise of authority.

1850.102–2 Contract adjustment boards.

14 CFR part 1209, subpart 3, Contract Adjustment Board, establishes the Contract Adjustment Board (CAB) as the approving authority to consider and dispose of requests from NASA contractors for extraordinary contractual actions.

1850.103 Contract adjustments.

1850.103–5 Processing cases.

1850.103–570 Submission of request to the Contract Adjustment Board.

(a) After investigating the facts and issues relevant to the contractor's request, the contracting officer shall forward the request to the Associate General Counsel for General Law, including in the forwarding letter—

(1) The nature of the case;

(2) The recommended disposition; and,

(3) If contractual action is recommended, the contracting officer's opinion that the action will facilitate the national defense.

(b) The forwarding letter shall enclose the contractor's request, all supporting material submitted by the contractor, and any material the contracting officer has obtained while investigating the facts and issues relevant to the request. Any classified information in the material forwarded shall be so identified.

(c) Electronic submittal is preferred for unclassified material.

1850.103–6 Disposition.

1850.103–670 Implementation of the Contract Adjustment Board's decision.

(a) The contracting officer shall take action authorized in the CAB's decision.

(b) Immediately upon execution, including any required Headquarters approval, of a contract or contract modification or amendment implementing the CAB decision, the contracting officer shall forward a copy of the contractual document to the Associate General Counsel for General Law.

1850.104 Residual powers.

1850.104–3 Special procedures for unusually hazardous or nuclear risks.

(a) *Indemnification requests.* (1) Contractor indemnification requests must be submitted to the cognizant contracting officer for the contract for which the indemnification clause is requested. Contractors shall submit a single request and shall ensure that duplicate requests are not submitted by associate divisions, subsidiaries, or central offices of the contractor.

(2) The contractor shall also provide evidence, such as a certificate of insurance or other customary proof of insurance, that such insurance is either in force or is available and will be in force during the indemnified period.

(b) *Action on indemnification requests.* (1) If recommending approval, the contracting officer shall forward the required information to the Assistant Administrator for Procurement, Program Operations Division, along with the following:

(i) For contracts of five years duration or longer, a determination, with supporting rationale, whether the indemnification approval and insurance coverage and premiums should be reviewed for adequacy and continued validity at points in time within the extended contract period.

(ii) A recommended Memorandum of Decision. In addition to the applicable requirements of FAR 50.103–6, the Memorandum of Decision shall contain the following:

(A) The specific definition of the unusually hazardous risk to which the contractor is exposed in the performance of the contract(s);

(B) A complete discussion of the contractor's financial protection program; and

(C) The extent to, and conditions under, which indemnification is being approved for subcontracts.

(d) If approving subcontractor indemnification, the contracting officer shall document the file with a memorandum for record addressing the items set forth in FAR 50.104–3(b) and include an analysis of the subcontractor's financial protection program. In performing this analysis, the contracting officer shall take into consideration the availability, cost, terms and conditions of insurance in relation to the unusually hazardous risk.

1850.104–370 Subcontractor indemnification requests.

Subcontractors shall submit requests for indemnification to the prime contractor and through higher tier subcontractor(s), as applicable. If the prime contractor agrees an indemnity clause should be flowed down to the subcontractor, the prime contractor shall forward its written request for subcontractor indemnification to the cognizant contracting officer for approval in accordance with FAR 50.104–3. The prime contractor's request shall provide information responsive to 1850.104–3, FAR 50.104–3, and FAR 50.104–3(b)(1)(i), (ii), (iv), (v), and (vii). The agreed upon definition of the unusually hazardous risk to be incorporated into the subcontract shall be the same as that incorporated in the prime contract.

1850.104–70 Lead NASA installation.

(a) Contractors applying for indemnification shall determine which NASA installation has the highest dollar amount of contracts for which indemnification is requested. The indemnification request should be submitted to the procurement officer for that installation, who will then designate a cognizant contracting officer. Contractors shall submit a single request and ensure duplicate requests are not submitted by associate divisions, subsidiaries, or central offices of the contractor.

(b) The receiving installation will become the lead installation and will remain so indefinitely. Lead installation designation may change to another installation if the affected procurement officers agree to the change. Should a change occur in the lead installation, all records related to indemnification of that contractor shall be transferred to the gaining installation.

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 1851.1—Contractor Use of Government Supply Sources

Sec.
1851.102–70 Contractor acquisition of filing cabinets.

Subpart 1851.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

1851.205 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14032, Mar. 25, 1997, unless otherwise noted.

Subpart 1851.1—Contractor Use of Government Supply Sources

1851.102–70 Contractor acquisition of filing cabinets.

(a) The Contractor officer must approve any planned contractor acquisition of filing cabinets whose title will vest in the Government. The contracting officer shall ensure that the contractor takes the following actions before submitting a request for approval:

(1) Transfer inactive records to contractor storage areas;

(2) Dispose of unnecessary records in accordance with corporate procedures;

(3) Use less expensive shelf filing methods; and

(4) Take other actions to reduce the need for filing cabinets.

(b) If after taking the actions in paragraphs (a)(1) through (4) of this section, the contractor requires additional filing capacity, it shall submit for contracting officer approval a request to order filing cabinets. This request shall include a discussion of why sufficient additional filing capacity is necessary and shall address the results of the actions in paragraphs (a) (1) through (4) of this section. The contracting officer shall review the request in consultation with the Records Management Officer, the Property and Supply Officer, and the project officer, is appropriate.

[62 FR 14032, Mar. 25, 1997, as amended at 69 FR 44610, July 27, 2004]

Subpart 1851.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

1851.205 Contract clause.

When the clause at FAR 52.251–2 is included in a solicitation or contract, also include the clause set forth at 1852.223–76.

[68 FR 43334, July 22, 2003]

SUBCHAPTER H—CLAUSES AND FORMS

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
1852.000 Scope of part.

Subpart 1852.2—Texts of Provisions and Clauses

1852.203–70 Display of Inspector General Hotline Posters.
1852.203–71 Requirement to inform employees of whistleblower rights.
1852.204–75 Security classification requirements.
1852.204–76 Security requirements for unclassified information technology resources.
1852.208–81 Restrictions on printing and duplicating.
1852.209–70 Product removal from Qualified Products List.
1852.209–71 Limitation of future contracting.
1852.209–72 Composition of the contractor.
1852.210–70 Brand name or equal.
1852.211–70 Packaging, handling, and transportation.
1852.212–70 Notice of delay.
1852.212–74 Period of performance.
1852.213–70 Offeror Representations and Certifications—Other Than Commercial Items.
1852.213–71 Evaluation—Other Than Commercial Items.
1852.214–70 Caution to offerors furnishing descriptive literature.
1852.214–71 Grouping for aggregate award.
1852.214–72 Full quantities.
1852.215–77 Preproposal/pre-bid conference.
1852.215–78 Make or buy program requirements.
1852.215–79 Price adjustment for ''Make- or-Buy'' changes.
1852.215–81 Proposal page limitations.
1852.215–84 Ombudsman.
1852.215–85 Proposal adequacy checklist.
1852.216–73 Estimated cost and cost sharing.
1852.216–74 Estimated cost and fixed fee.
1852.216–75 Payment of fixed fee.
1852.216–76 Award fee for service contracts.
1852.216–77 Award fee for end item contracts.
1852.216–78 Firm fixed price.
1852.216–80 Task ordering procedure.
1852.216–81 Estimated cost.
1852.216–83 Fixed price incentive.
1852.216–84 Estimated cost and incentive fee.
1852.216–85 Estimated cost and award fee.
1852.216–87 Submission of vouchers for payment.
1852.216–88 Performance incentive.
1852.216–89 Assignment and release forms.
1852.216–90 Allowability of legal costs incurred in connection with a whistleblower proceeding.
1852.217–70 Property administration and reporting.
1852.217–71 Phased acquisition using down-selection procedures.
1852.217–72 Phased acquisition using progressive competition down-selection procedures.
1852.219–73 Small business subcontracting plan.
1852.219–74 Use of Rural Area Small Businesses.
1852.219–75 Small business subcontracting reporting.
1852.219–76 NASA 8 percent goal.
1852.219–77 NASA Mentor-Protégé program.
1852.219–79 Mentor requirements and evaluation.
1852.219–80 Limitation on subcontracting—SBIR Phase I Program.
1852.219–81 Limitation on subcontracting—SBIR Phase II program.
1852.219–82 Limitation on subcontracting—STTR program.
1852.219–83 Limitation of the principal investigator—SBIR program.
1852.219–84 Limitation of the principal investigator—STTR program.
1852.219–85 Conditions for final payment—SBIR and STTR contracts.
1852.223–70 Safety and health.
1852.223–71 Frequency authorization.
1852.223–72 Safety and Health (Short Form).
1852.223–73 Safety and health plan.
1852.223–74 Drug– and alcohol-free workforce.
1852.223–75 Major breach of safety or security.
1852.223–76 Federal Automotive Statistical Tool Reporting.
1852.225–8 Duty-free entry of space articles.
1852.225–70 Export Licenses.
1852.225–72 [Reserved]
1852.227–11 Patent Rights—Retention by the Contractor (Short Form).
1852.227–14 Rights in data—General.
1852.227–17 Rights in data—Special works.
1852.227–19 Commercial computer software—Restricted rights.
1852.227–70 New technology.
1852.227–71 Requests for waiver of rights to inventions.
1852.227–72 Designation of new technology representative and patent representative.
1852.227–84 Patent rights clauses.
1852.227–85 Invention reporting and rights—Foreign.
1852.227–86 Commercial computer software—Licensing.

1852.228–70 Aircraft ground and flight risk.
1852.228–71 Aircraft flight risks.
1852.228–73 Bid bond.
1852.228–75 Minimum insurance coverage.
1852.228–76 Cross-waiver of liability for international space station activities.
1852.228–78 Cross-waiver of liability for science or space exploration activities unrelated to the International Space Station.
1852.228–80 Insurance—Immunity From Tort Liability.
1852.228–81 Insurance—Partial Immunity From Tort Liability.
1852.228–82 Insurance—Total Immunity From Tort Liability.
1852.231–70 Precontract costs.
1852.231–71 Determination of compensation reasonableness.
1852.232–70 NASA Modification of FAR 52.232–12.
1852.232–77 Limitation of funds (Fixed-Price Contract).
1852.232–79 Payment for on-site preparatory costs.
1852.232–81 Contract funding.
1852.232–82 Submission of requests for progress payments.
1852.233–70 Protests to NASA.
1852.234–1 Notice of Earned Value Management System.
1852.234–2 Earned Value Management System.
1852.235–70 Center for AeroSpace Information.
1852.235–71 Key personnel and facilities.
1852.235–72 Instructions for responding to NASA Research Announcements.
1852.235–73 Final scientific and technical reports.
1852.235–74 Additional reports of work—research and development.
1852.236–71 Additive or deductive items.
1852.236–72 Bids with unit prices.
1852.236–73 Hurricane plan.
1852.236–74 Magnitude of requirement.
1852.236–75 Partnering for construction contracts.
1852.237–70 Emergency evacuation procedures.
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1852.239–70 Alternate delivery points.
1852.241–70 Renewal of contract.
1852.242–70 Technical direction.
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1852.242–78 Emergency medical services and evacuation.
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1852.244–70 Geographic participation in the aerospace program.
1852.245–70 Contractor requests for Government-provided property.
1852.245–71 Installation-accountable Government property.
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1852.245–73 Financial reporting of NASA property in the custody of contractors.
1852.245–74 Identification and marking of Government equipment.
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1852.245–76 List of Government property furnished pursuant to FAR 52.245–1.
1852.245–77 List of Government property furnished pursuant to FAR 52.245–2.
1852.245–78 Physical inventory of capital personal property.
1852.245–79 Records and disposition reports for Government property with potential historic or significant real value.
1852.245–80 Government property management information.
1852.245–81 List of available Government property.
1852.245–82 Occupancy management requirements.
1852.245–83 Real property management requirements.
1852.246–70 Mission Critical Space System Personnel Reliability Program.
1852.246–71 Government contract quality assurance functions.
1852.246–72 Material Inspection and Receiving Report.
1852.246–73 Human space flight item.
1852.247–71 Protection of the Florida manatee.
1852.247–72 Advance notice of shipment.
1852.247–73 Bills of Lading.
1852.249–72 Termination (utilities).

Subpart 1852.3—Provision and Clause Matrix

1852.300 Scope of subpart.
1852.301 Solicitation provisions and contract clauses (Matrix).

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

SOURCE: 54 FR 28340, July 5, 1989, unless otherwise noted.

1852.000 Scope of part.

This part, in conjunction with FAR part 52—

(a) Sets forth the provisions and clauses prescribed in the NFS,

(b) Gives instructions for their use, and

(c) Presents a matrix listing the provisions and clauses applicable to each principal contract type and/or purpose

(e.g., fixed-price supply, cost-reimbursement research and development).

[61 FR 40547, Aug. 5, 1996]

Subpart 1852.2—Texts of Provisions and Clauses

1852.203–70 Display of Inspector General Hotline Posters.

As prescribed in 1803.7001, insert the following clause:

DISPLAY OF INSPECTOR GENERAL HOTLINE POSTERS (JUN 2001)

(a) The Contractor shall display prominently in common work areas within business segments performing work under this contract, Inspector General Hotline Posters available under paragraph (b) of this clause.

(b) Inspector General Hotline Posters may be obtained from NASA Office of Inspector General, Code W, Washington, DC, 20546–0001, (202) 358–1220.

[66 FR 29727, June 1, 2001]

1852.203–71 Requirement to inform employees of whistleblower rights.

As prescribed in 1803.970, use the following clause:

REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS

[AUGUST 2014]

(a) The Contractor shall inform its employees in writing, in the predominant native language of the workforce, of contractor employee whistleblower rights and protections under 10 U.S.C. 2409, as described in subpart 1803.9 of the NASA FAR Supplement.

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

(End of clause)

[79 FR 43961, July 29, 2014, as amended at 79 FR 51501, Aug. 29, 2014]

1852.204–75 Security classification requirements.

As prescribed in 1804.404–70, insert the following clause:

SECURITY CLASSIFICATION REQUIREMENTS (SEP 1989)

Performance under this contract will involve access to and/or generation of classified information, work in a security area, or both, up to the level of _____ [insert the applicable security clearance level]. See Federal Acquisition Regulation clause 52.204–2 in this contract and DD Form 254, Contract Security Classification Specification, Attachment _____ [Insert the attachment number of the DD Form 254].

(End of clause)

[61 FR 40548, Aug. 5, 1996]

1852.204–76 Security requirements for unclassified information technology resources.

As prescribed in 1804.470–4(a), insert the following clause:

SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (MONTH YEAR)

(a) The contractor shall protect the confidentiality, integrity, and availability of NASA Electronic Information and IT resources and protect NASA Electronic Information from unauthorized disclosure.

(b) This clause is applicable to all NASA contractors and sub-contractors that process, manage, access, or store unclassified electronic information, to include Sensitive But Unclassified (SBU) information, for NASA in support of NASA's missions, programs, projects and/or institutional requirements. Applicable requirements, regulations, policies, and guidelines are identified in the Applicable Documents List (ADL) provided as an attachment to the contract. The documents listed in the ADL can be found at: *http://www.nasa.gov/offices/ocio/itsecurity/index.html*. For policy information considered sensitive, the documents will be identified as such in the ADL and made available through the Contracting Officer.

(c) *Definitions.* (1) IT resources means any hardware or software or interconnected system or subsystem of equipment, that is used to process, manage, access, or store electronic information.

(2) NASA Electronic Information is any data (as defined in the Rights in Data clause of this contract) or information (including information incidental to contract administration, such as financial, administrative, cost or pricing, or management information) that is processed, managed, accessed or stored on an IT system(s) in the performance of a NASA contract.

(3) IT Security Management 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. Unlike the IT security plan, which addresses the IT system, the IT Security Management Plan addresses how the contractor will manage personnel and processes associated with IT Security on the instant contract.

(4) IT Security Plan—this is a FISMA requirement; see the ADL for applicable requirements. The IT Security Plan is specific to the IT System and not the contract. Within 30 days after award, the contractor shall develop and deliver an IT Security Management Plan to the Contracting Officer; the approval authority will be included in the ADL. All contractor personnel requiring physical or logical access to NASA IT resources must complete NASA's annual IT Security Awareness training. Refer to the IT Training policy located in the IT Security Web site at *https://itsecurity.nasa.gov/policies/index.html*.

(d) The contractor shall afford 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 NASA Electronic Information or to the function of IT systems operated on behalf of NASA, and to preserve evidence of computer crime.

(e) At the completion of the contract, the contractor shall return all NASA information and IT resources provided to the contractor during the performance of the contract in accordance with retention documentation available in the ADL. The contractor shall provide a listing of all NASA Electronic information and IT resources generated in performance of the contract. At that time, the contractor shall request disposition instructions from the Contracting Officer. The Contracting Officer will provide disposition instructions within 30 calendar days of the contractor's request. Parts of the clause and referenced ADL may be waived by the contracting officer, if the contractor's ongoing IT security program meets or exceeds the requirements of NASA Procedural Requirements (NPR) 2810.1 in effect at time of award. The current version of NPR 2810.1 is referenced in the ADL. The contractor shall submit a written waiver request to the Contracting Officer within 30 days of award. The waiver request will be reviewed by the Center IT Security Manager. If approved, the Contractor Officer will notify the contractor, by contract modification, which parts of the clause or provisions of the ADL are waived.

(f) The contractor shall insert this clause, including this paragraph in all subcontracts that process, manage, access or store NASA Electronic Information in support of the mission of the Agency.

(End of clause)

[76 FR 4080, Jan. 24, 2011]

1852.208–81 Restrictions on Printing and Duplicating.

As prescribed in 1808.870, insert the following clause:

RESTRICTIONS ON PRINTING AND DUPLICATING (NOV 2004)

(a) The Contractor may duplicate or copy any documentation required by this contract in accordance with the provisions of the Government Printing and Binding Regulations, No. 26, S. Pub 101–9, U.S. Government Printing Office, Washington, DC, 20402, published by the Joint Committee on Printing, U.S. Congress.

(b) The Contractor shall not perform, or procure from any commercial source, any printing in connection with the performance of work under this contract. The term ''printing'' includes the processes of composition, platemaking, presswork, duplicating, silk screen processes, binding, microform, and the end items of such processes and equipment.

(c) The Contractor is authorized to duplicate or copy production units provided the requirement does not exceed 5,000 production units of any one page or 25,000 units in the aggregate of multiple pages. Such pages may not exceed a maximum image size of 10–¾ by 14–¼ inches. A ''production unit'' is one sheet, size 8–½ × 11 inches (215 × 280 mm), one side only, and one color ink.

(d) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the Contractor to respond to the terms of the contract).

(e) Costs associated with printing, duplicating, or copying in excess of the limits in paragraph (c) of this clause are unallowable without prior written approval of the Contracting Officer. If the Contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or substantial duplicating or copying, it immediately shall provide written notice to the Contracting Officer and request approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with the provisions of the Government Printing and Binding Regulations, NFS 1808.802, and NPR 1490.5, NASA Procedural Requirements for Printing, Duplicating, and Copying Management.

(f) The Contractor shall include in each subcontract which may involve a requirement for any printing, duplicating, and copying in excess of the limits specified in paragraph (c) of this clause, a provision substantially the same as this clause, including this paragraph (f).

(End of clause)

[66 FR 53548, Oct. 23, 2001, as amended at 69 FR 63459, Nov. 2, 2004]

1852.209–70 Product removal from Qualified Products List.

As prescribed in 1809.206–71, insert the following clause:

PRODUCT REMOVAL FROM QUALIFIED PRODUCTS LIST (DEC 1988)

If, during the performance of this contract, the product being furnished is removed from the Qualified Products List for any reason, the Government may terminate the contract for Default pursuant to the default clause of the contract.

(End of clause)

[61 FR 40549, Aug. 5, 1996]

1852.209–71 Limitation of future contracting.

As prescribed in 1809.507–2, the contracting officer may insert a clause substantially as follows in solicitations and contracts, in compliance with FAR 9.507–2:

LIMITATION OF FUTURE CONTRACTING (DEC 1988)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is [describe the conflict].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements or work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime of first-tier subcontractor under an ensuing NASA contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). NASA shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to complete with those other companies.

(End of clause)

[61 FR 40549, Aug. 5, 1996]

1852.209–72 Composition of the contractor.

As prescribed in 1809.670, insert the following clause:

COMPOSITION OF THE CONTRACTOR (DEC 1988)

If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable under this contract.

(End of clause)

[61 FR 40549, Aug. 5, 1996]

1852.210–70 Brand name or equal.

As prescribed in 1810.011–70(a), insert the following provision:

BRAND NAME OR EQUAL (DEC 1988)

(a) As used in this provision, ''brand name'' means identification of products by make and model. The term ''bid'' means ''offer'' if this is a negotiated acquisition.

(b) If items called for by this solicitation are identified in the Schedule by a ''brand name or equal'' description, that identification is intended to be descriptive, not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering ''equal'' products, including products of the brand name manufacturer other than the one described by brand name, will be considered for award if the products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the solicitation.

(c) Unless the offeror clearly indicates in the bid that it is offering an ''equal'' product, the bid shall be considered as offering a brand-name product referenced in the solicitation.

(d)(1) If the offeror proposes to furnish an ''equal'' product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or that product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in

its bid, as well as on other information reasonably available to the contracting activity.

(2) Caution to Offerors: The contracting office is not responsible for locating or securing any information not identified in the bid and reasonably available to the contracting office. Accordingly, to ensure that sufficient information is available, the offeror must furnish as a part of its bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to (i) determine whether the product offered meets the salient characteristics requirements of the solicitation and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting office.

(3) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall (i) include in the bid a clear description of the proposed modifications and (ii) clearly mark any descriptive material to show them.

(4) If this is a sealed-bid acquisition, modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 56 FR 12460, Mar. 26, 1991]

1852.211–70 Packaging, handling, and transportation.

As prescribed in 1811.404–70, insert the following clause:

PACKAGING, HANDLING, AND TRANSPORTATION (SEP 2005)

(a) The Contractor shall comply with NASA Procedural Requirements (NPR) 6000.1, ''Requirements for Packaging, Handling, and Transportation for Aeronautical and Space Systems, Equipment, and Associated Components'', as may be supplemented by the statement of work or specifications of this contract, for all items designated as Class I, II, or III.

(b) The Contractor's packaging, handling, and transportation procedures may be used, in whole or in part, subject to the written approval of the Contracting Officer, provided (1) the Contractor's procedures are not in conflict with any requirements of this contract, and (2) the requirements of this contract shall take precedence in the event of any conflict with the Contractor's procedures.

(c) The Contractor must place the requirements of this clause in all subcontracts for items that will become components of deliverable Class I, II, or III items.

(End of clause)

[65 FR 37062, June 13, 2000, as amended at 70 FR 52941, Sept. 6, 2005]

1852.212–70 Notice of delay.

As prescribed at 1812.104–70(a), insert the following clause:

NOTICE OF DELAY (DEC 1988)

If, because of technical difficulties, the Contractor becomes unable to complete the contract work at the time specified, notwithstanding the exercise of good faith and diligent efforts in performing the work called for under this contract, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons for it. The notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than 45 days before the completion date specified in this contract, unless otherwise permitted by the Contracting Officer. When notice is given, the Contracting Officer may extend the time specified in the Schedule for such period as is deemed advisable.

(End of clause)

1852.212–74 Period of performance.

As prescribed in 1812.104–70(e), insert the following clause:

PERIOD OF PERFORMANCE (DEC 1988)

The period of performance of this contract shall be [Insert period of performance dates].

(End of clause)

1852.213–70 Offeror Representations and Certifications—Other Than Commercial Items.

As prescribed in 1813.302–570, insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—OTHER THAN COMMERCIAL ITEMS (JUL 2004)

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

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

''Forced or indentured child labor'' means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its

nonperformance and for which the worker does not offer himself voluntarily; or

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

''Service-disabled veteran-owned small business concern''—

(1) Means a small business concern—

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

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

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

''Small business concern'' means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and size standards in this solicitation.

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

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

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

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

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

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

(b) *Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701).* (1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

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

(3) Taxpayer Identification Number (TIN).

[ ] TIN:_____.

[ ] TIN has been applied for.

[ ] TIN is not required because:

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

[ ] Offeror is an agency or instrumentality of a foreign government;

[ ] Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

[ ] Sole proprietorship;

[ ] Partnership;

[ ] Corporate entity (not tax-exempt);

[ ] Corporate entity (tax-exempt);

[ ] Government entity (Federal, State, or local);

[ ] Foreign government;

[ ] International organization per 26 CFR 1.6049–4;

[ ] Other _____.

(5) Common parent.

[ ] Offeror is not owned or controlled by a common parent;

[ ] Name and TIN of common parent:

Name _____.

TIN_____.

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

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

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

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

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes,

that it [ ] is, [ ] is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

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

(6) Small Business Size for the Small Business Competitiveness

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

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

(ii) [Complete only for solicitations indicated as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).] Offeror represents as follows:

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

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

(Check one of the following):

—50 or fewer	—$1 million or less.
—51–100	—$1,000,001–$2 million.
—101–250	—$2,000,001–$3.5 million.
—251–500	—$3,500,001–$5 million.
—501–750	—$5,000,001–$10 million.
—751–1000	—$10,000,001–$17 million.
—Over 1000	—Over $17 million.

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

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

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(7)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(8) (Complete if dollar value of the resultant contract is expected to exceed $25,000 and the offeror has represented itself as disadvantaged in paragraph (c)(4) of this provision.) [The offeror shall check the category in which its ownership falls]:

— Black American.
— Hispanic American.
— Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
— Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).
— Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).
— Individual/concern, other than one of the preceding.

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

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

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

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

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

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

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

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

(1) The offeror certifies that each end product, except those listed in paragraph (e)(2) of

this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms ''component,'' ''domestic end product,'' ''end product,'' ''foreign end product,'' and ''United States'' are defined in the clause of this solicitation entitled ''Buy American Act-Supplies.''

(2) Foreign End Products:

Line Item No. and Country of Origin

[List as necessary]

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

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

(i) The offeror certifies that each end product, except those listed in paragraph (f)(1)(ii) or (f)(1)(iii) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms ''component,'' ''domestic end product,'' ''end product,'' ''foreign end product,'' and ''United States'' are defined in the clause of this solicitation entitled ''Buy American Act—Free Trade Agreements—Israeli Trade Act''

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled ''Buy American Act—Free Trade Agreements—Israeli Trade Act: NAFTA Country or Israeli End Products:

Line Item No. and Country of Origin

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (f)(1)(ii) of this provision) as defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act.'' The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line Item No. and Country of Origin

[List as necessary]

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

(2) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I (JAN 2004). If Alternate I to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph (f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

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

Canadian End Products:

Line Item No.

(List as necessary)

(3) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II (JAN 2004). If Alternate II to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph (f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

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

Canadian or Israeli End Products:

Line Item No. and Country of Origin

[List as necessary]

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225–5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (f)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or FTA country end product, as defined in the clause of this solicitation entitled ''Trade Agreements.''

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

Other End Products:

Line Item No. and Country of Origin

[List as necessary]

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

(g) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (g)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at FAR 22.1503(b).]

(1) Listed end products.

Listed End Product and Listed Countries of Origin

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

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

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

(End of provision)

Alterate I (MAR 2004) As prescribed in 1813.302–570(a)(2)(i), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Recovered Material Certification. As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by the applicable contract specifications.

Alternate II (MAR 2004) As prescribed in 1813.302–570(a)(2)(ii), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Historically Black College or University and Minority Institution Representation

(1) Definitions. As used in this provision—

''Historically black college or university'' means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

''Minority institution'' means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k, including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act (20 U.S.C. 1101a)).

(2) Representation. The offeror represents that it—

( ) is ( ) is not a historically black college or university;

( ) is ( ) is not a minority institution.

Alternate III (MAR 2004) As prescribed in 1813.302–570(a)(2)(iii), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Representation of Limited Rights Data and Restricted Computer Software

(1) This solicitation sets forth the work to be performed if a contract award results, and the Government's known delivery requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at FAR 52.227–16, if included in the contract. Any data delivered under the resulting contract will be subject to the

Rights in Data-General clause at FAR 52.227–14 that is to be included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(2) As an aid in determining the Government's need to include Alternate II or Alternate III in the clause at FAR 52.227–14, Rights in Data-General, the offeror shall complete paragraph (3) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(3) The offeror has reviewed the requirements for the delivery of data or software and states [offeror check appropriate block]—

( ) None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

( ) Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

_____

_____

_____

NOTE: ''Limited rights data'' and ''Restricted computer software'' are defined in the contract clause entitled ''Rights in Data-General.''

[67 FR 38905, June 6, 2002, as amended at 69 FR 13261, Mar. 22, 2004; 69 FR 44610, July 27, 2004]

1852.213–71 Evaluation—Other Than Commercial Items.

As prescribed in 1813.302–570(b) insert the following provision:

EVALUATION—OTHER THAN COMMERCIAL ITEMS—JUN 2002

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

_____

_____

_____

[Contracting Officer shall insert the evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.304).]

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

(End of provision)

[67 FR 38905, June 6, 2002, as amended at 67 FR 50824, Aug. 6, 2002]

1852.214–70 Caution to offerors furnishing descriptive literature.

As prescribed in 1814.201–670(a), insert the following provision:

CAUTION TO OFFERORS FURNISHING DESCRIPTIVE LITERATURE (DEC 1988)

Bidders are cautioned against furnishing as a part of their bids descriptive literature that includes language reserving to the bidder the right to deviate from the requirements of the invitation for bids. Statements that ''Data are subject to change without notice,'' ''Prices subject to change without notice,'' or words having a similar effect are examples of such reservation. The Government will reject as nonresponsive any bid that incorporates literature containing such language or any bid that must be evaluated by using literature containing such language. Bidders should clearly label any submissions of descriptive literature not intended to form a part of a bid as such in order to preclude any need for the Government to interpret the bidder's intent in submitting descriptive literature. [See FAR 14.202–5.]

(End of provision)

[61 FR 47082, Sept. 6, 1996]

1852.214–71 Grouping for Aggregate Award.

As prescribed in 1814.201–670(c), insert the following provision:

GROUPING FOR AGGREGATE AWARD (MAR 1989)

(a) The Government will evaluate offers and make award on a basis of the aggregate offers for items

[*Insert the item numbers and/or descriptions*].

The Government will not consider an offer for quantities less than those specified for these items.

(b) If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on the total quantities for all of the items specified in paragraph (a) of this section.

(End of provision)

[61 FR 47082, Sept. 6, 1996]

1852.214–72 Full quantities.

As prescribed in 1814.201–670(b), insert the following provision:

FULL QUANTITIES (DEC 1988)

The Government will not consider an offer for quantities of items less than those specified. If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on full quantities.

(End of provision)

[61 FR 47082, Sept. 6, 1996]

1852.215–77 Preproposal/pre-bid conference.

As prescribed in 1815.209–70(a), insert the following provision:

PREPROPOSAL/PRE-BID CONFERENCE (DEC 1988)

(a) A preproposal/pre-bid conference will be held as indicated below:

Date:

Time:

Location:

Other Information, as applicable:

[Insert the applicable conference information.]

(b) Attendance at the preproposal/pre-bid conference is recommended; however, attendance is neither required nor a prerequisite for proposal/bid submission and will not be considered in the evaluation.

(End of provision)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9965, Feb. 27, 1998]

1852.215–78 Make or buy program requirements.

As prescribed in 1815.408–70(a), insert the following provision:

MAKE OR BUY PROGRAM REQUIREMENTS (FEB 1998)

The offeror shall submit a Make-or-Buy Program in accordance with the requirements of Federal Acquisition Regulation (FAR) 15.407–2. The offeror shall include the following supporting documentation with its proposal:

(a) A description of each major item or work effort.

(b) Categorization of each major item or work effort as ''must make,'' ''must buy,'' or ''can either make or buy.''

(c) For each item or work effort categorized as ''can either make or buy,'' a proposal either to ''make'' or ''buy.''

(d) Reasons for (i) categorizing items and work effort as ''must make'' or ''must buy'' and (ii) proposing to ''make'' or ''buy'' those categorized as ''can either make or buy.'' The reasons must include the consideration given to the applicable evaluation factors described in the solicitation and be in sufficient detail to permit the Contracting Officer to evaluate the categorization and proposal.

(e) Designation of the offeror's plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(f) Identification of proposed subcontractors, if known, and their location and size status.

(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(End of provision)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9965, Feb. 27, 1998; 63 FR 32764, June 16, 1998]

1852.215–79 Price adjustment for "Make- or-Buy" changes.

As prescribed in 1815.407–70(b), insert the following clause:

PRICE ADJUSTMENT FOR ''MAKE-OR-BUY'' CHANGES (DEC 1988)

The following make-or-buy items are subject to the provisions of paragraph (d) of the clause at FAR 52.215–21, Change or Additions to Make-or-Buy Program, of this contract:

Item Description	Make-or-Buy Determination

(End of clause)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9966, Feb. 27, 1998]

1852.215–81 Proposal page limitations.

As prescribed in 1815.209–70(d), insert the following provision:

PROPOSAL PAGE LIMITATIONS (FEB 1998)

(a) The following page limitations are established for each portion of the proposal submitted in response to this solicitation.

Proposed Section (List each volume or section)	Page Limit (Specify limit)
_____	_____
_____	_____
_____	_____
_____	_____

(b) A page is defined as one side of sheet, 8½″ × 11″, with at least one inch margins on all sides, using not smaller than 12 point type. Foldouts count as an equivalent number of 8½″ × 11″ pages. The metric standard format most closely approximating the described standard 8½″ × 11″ size may also be used.

(c) Title pages and tables of contents are excluded from the page counts specified in paragraph (a) of this provision. In addition, the Cost section of your proposal is not page limited. However, this section is to be strictly limited to cost and price information. Information that can be construed as belonging in one of the other sections of the proposal will be so construed and counted against that section's page limitation.

(d) If final proposal revisions are requested, separate page limitations will be specified in the Government's request for that submission.

(e) Pages submitted in excess of the limitations specified in this provision will not be evaluated by the Government and will be returned to the offeror.

(End of provision)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9966, Feb. 27, 1998]

1852.215–84 Ombudsman.

As prescribed in 1815.7003, insert the following clause:

OMBUDSMAN (NOV 2011)

(a) An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution.

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, whose name, address, telephone number, facsimile number, and email address may be found at: *http://prod.nais.nasa.gov/pub/pub_library/Omb.html*. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the Agency ombudsman identified at the above URL. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer or as specified elsewhere in this document.

(End of clause)

Alterate I (JUN 2000). As prescribed in 1815.7003, insert the following paragraph (c):

(c) If this is a task or delivery order contract, the ombudsman shall review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures of the contract.

[62 FR 3484, Jan. 23, 1997, as amended at 65 FR 38777, June 22, 2000; 68 FR 62023, Oct. 31, 2003; 76 FR 72329, Nov. 23, 2011]

1852.215–85 Proposal adequacy checklist.

As prescribed in 1815.408–70(c), use the following provision:

PROPOSAL ADEQUACY CHECKLIST (MAR 2014)

The offeror shall complete the following checklist, providing location of requested information, or an explanation of why the requested information is not provided. In preparation of the offeror's checklist, offerors may elect to have their prospective subcontractors use the same or similar checklist as appropriate.

PROPOSAL ADEQUACY CHECKLIST

References	Submission item	Proposal page No.	If not provided explain (may use continuation pages traceable to this checklist)
	GENERAL INSTRUCTIONS		
1. FAR 15.408, Table 15–2, Section I Paragraph A.	Is there a properly completed first page of the proposal per FAR 15.408 Table 15–2 I.A or as specified in the solicitation?		
2. FAR 15.408, Table 15–2, Section I Paragraph A(7).	Does the proposal identify the need for Government-furnished material/tooling/test equipment? Include the accountable contract number and contracting officer contact information if known.		
3. FAR 15.408, Table 15–2, Section I Paragraph A(8).	If your organization is subject to Cost Accounting Standards (CAS), does the proposal identify the current status of your CAS Disclosure Statement? Does the proposal identify and explain notifications of noncompliance with Cost Accounting Standards Board or Cost Accounting Standards (CAS); any proposal inconsistencies with your disclosed practices or applicable CAS; and inconsistencies with your established estimating and accounting principles and procedures?		
4. FAR 15.408, Table 15–2, Section I, Paragraph C(1).	Does the proposal disclose any other known activity that could materially impact the costs?		
FAR 2.101, ''Cost or pricing data''.	This may include, but is not limited to, such factors as— (1) Vendor quotations; (2) Nonrecurring costs; (3) Information on changes in production methods and in production or purchasing volume; (4) Data supporting projections of business prospects and objectives and related operations costs; (5) Unit-cost trends such as those associated with labor efficiency; (6) Make-or-buy decisions; (7) Estimated resources to attain business goals; and (8) Information on management decisions that could have a significant bearing on costs.		
5. FAR 15.408, Table 15–2, Section I Paragraph B.	Is an Index of all certified cost or pricing data and information accompanying or identified in the proposal provided and appropriately referenced?		
6. FAR 15.403–1(b) ..	Are there any exceptions to submission of certified cost or pricing data pursuant to FAR 15.403–1(b)? If so, is supporting documentation included in the proposal? (Note questions 18–20.)		
7. FAR 15.408, Table 15–2, Section I Paragraph C(2)(i).	Does the proposal disclose the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data?		
8. FAR 15.408, Table 15–2, Section I Paragraph C(2)(ii).	Does the proposal disclose the nature and amount of any contingencies included in the proposed price?		
9. FAR 15.408 Table 15–2, Section II, Paragraph A or B.	Does the proposal explain the basis of all cost estimating relationships (labor hours or material) proposed on other than a discrete basis?		
10. FAR 15.408, Table 15–2, Section I Paragraphs D and E.	Is there a summary of total cost by element of cost and are the elements of cost cross-referenced to the supporting cost or pricing data? (Breakdowns for each cost element must be consistent with your cost accounting system, including breakdown by year.)		
11. FAR 15.408, Table 15–2, Section I Paragraphs D and E.	If more than one Contract Line Item Number (CLIN) or sub Contract Line Item Number (sub-CLIN) is proposed as required by the RFP, are there summary total amounts covering all line items for each element of cost and is it cross-referenced to the supporting cost or pricing data?		
12. FAR 15.408, Table 15–2, Section I Paragraph F.	Does the proposal identify any incurred costs for work performed before the submission of the proposal?		
13. FAR 15.408, Table 15–2, Section I Paragraph G.	Is there a Government forward pricing rate agreement (FPRA)? If so, the offeror shall identify the official submittal of such rate and factor data. If not, does the proposal include all rates and factors by year that are utilized in the development of the proposal and the basis for those rates and factors?		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided explain (may use continuation pages traceable to this checklist)
	COST ELEMENTS		
	MATERIALS AND SERVICES		
14. FAR 15.408, Table 15–2, Section II Paragraph A.	Does the proposal include a consolidated summary of individual material and services, frequently referred to as a Consolidated Bill of Material (CBOM), to include the basis for pricing? The offeror's consolidated summary shall include raw materials, parts, components, assemblies, subcontracts and services to be produced or performed by others, identifying as a minimum the item, source, quantity, and price.		
	SUBCONTRACTS (Purchased materials or services)		
15. FAR 15.404–3(c) FAR 52.244–2	Per the thresholds of FAR 15.404–3(c), Subcontract Pricing Considerations, does the proposal include a copy of the applicable subcontractor's certified cost or pricing data?		
16. FAR 15.408, Table 15–2, Note 1; Section II Paragraph A.	Is there a price/cost analysis establishing the reasonableness of each of the proposed subcontracts included with the proposal? If the offeror's price/cost analyses are not provided with the proposal, does the proposal include a matrix identifying dates for receipt of subcontractor proposal, completion of fact finding for purposes of price/cost analysis, and submission of the price/cost analysis?		
	EXCEPTIONS TO CERTIFIED COST OR PRICING DATA		
17. FAR 52.215–20 ... FAR 2.101, ''commercial item''	Has the offeror submitted an exception to the submission of certified cost or pricing data for commercial items proposed either at the prime or subcontractor level, in accordance with provision 52.215–20? a. Has the offeror specifically identified the type of commercial item claim (FAR 2.101 commercial item definition, paragraphs (1) through (8)), and the basis on which the item meets the definition? b. For modified commercial items (FAR 2.101 commercial item definition paragraph (3)); did the offeror classify the modification(s) as either— i. A modification of a type customarily available in the commercial marketplace (paragraph (3)(i)); or ii. A minor modification (paragraph (3)(ii)) of a type not customarily available in the commercial marketplace made to meet Federal Government requirements not exceeding the thresholds in FAR 15.403–1(c)(3)(iii)(B)? c. For proposed commercial items ''of a type'', or ''evolved'' or modified (FAR 2.101 commercial item definition paragraphs (1) through (3)), did the contractor provide a technical description of the differences between the proposed item and the comparison item(s)?		
18. FAR 15.408, Table 15–2, Section II Paragraph A(1).	Does the proposal support the degree of competition and the basis for establishing the source and reasonableness of price for each subcontract or purchase order priced on a competitive basis exceeding the threshold for certified cost or pricing data?		
	INTERORGANIZATIONAL TRANSFERS		
19. FAR 15.408, Table 15–2, Section II Paragraph A.(2).	For inter-organizational transfers proposed at cost, does the proposal include a complete cost proposal in compliance with Table 15–2?		
20. FAR 15.408, Table 15–2, Section II Paragraph A(1).	For inter-organizational transfers proposed at price in accordance with FAR 31.205–26(e), does the proposal provide an analysis by the prime that supports the exception from certified cost or pricing data in accordance with FAR 15.403–1?		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided explain (may use continuation pages traceable to this checklist)
	DIRECT LABOR		
21. FAR 15.408, Table 15–2, Section II Paragraph B.	Does the proposal include a time phased (i.e.; monthly, quarterly) breakdown of labor hours, rates and costs by category or skill level? If labor is the allocation base for indirect costs, the labor cost must be summarized in order that the applicable overhead rate can be applied.		
22. FAR 15.408, Table 15–2, Section II Paragraph B.	For labor Basis of Estimates (BOEs), does the proposal include labor categories, labor hours, and task descriptions, (e.g.; Statement of Work reference, applicable CLIN, Work Breakdown Structure, rationale for estimate, applicable history, and time-phasing)?		
23. FAR subpart 22.10.	If covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67), are the rates in the proposal in compliance with the minimum rates specified in the statute?		
	INDIRECT COSTS		
24. FAR 15.408, Table 15–2, Section II Paragraph C.	Does the proposal indicate the basis of estimate for proposed indirect costs and how they are applied? (Support for the indirect rates could consist of cost breakdowns, trends, and budgetary data.)		
	OTHER COSTS		
25. FAR 15.408, Table 15–2, Section II Paragraph D.	Does the proposal include other direct costs and the basis for pricing? If travel is included does the proposal include number of trips, number of people, number of days per trip, locations, and rates (e.g. airfare, per diem, hotel, car rental, etc)?		
26. FAR 15.408, Table 15–2, Section II Paragraph E.	If royalties exceed $1,500 does the proposal provide the information/data identified by Table 15–2?		
27. FAR 15.408, Table 15–2, Section II Paragraph F.	When facilities capital cost of money is proposed, does the proposal include submission of Form CASB–CMF or reference to an FPRA/FPRP and show the calculation of the proposed amount?		
	FORMATS FOR SUBMISSION OF LINE ITEM SUMMARIES		
28. FAR 15.408, Table 15–2, Section III.	Are all cost element breakdowns provided using the applicable format prescribed in FAR 15.408, Table 15–2 III? (or alternative format if specified in the request for proposal).		
29. FAR 15.408, Table 15–2, Section III Paragraph B.	If the proposal is for a modification or change order, have cost of work deleted (credits) and cost of work added (debits) been provided in the format described in FAR 15.408, Table 15–2.III.B?		
30. FAR 15.408, Table 15–2, Section III Paragraph C.	For price revisions/redeterminations, does the proposal follow the format in FAR 15.408, Table 15–2.III.C?		
	OTHER		
31. FAR 16.4	If an incentive contract type, does the proposal include offeror proposed target cost, target profit or fee, share ratio, and, when applicable, minimum/maximum fee, ceiling price?		
32. FAR 16.203–4 and FAR 15.408 Table 15–2, Section II, Paragraphs A, B, C, and D.	If Economic Price Adjustments are being proposed, does the proposal show the rationale and application for the economic price adjustment?		
33. FAR 52.232–28 ...	If the offeror is proposing Performance-Based Payments—did the offeror comply with FAR 52.232–28?		
34. FAR 15.408(n) .... FAR 52.215–22 FAR 52.215–23	Excessive Pass-through Charges—Identification of Subcontract Effort: If the offeror intends to subcontract more than 70% of the total cost of work to be performed, does the proposal identify: (i) the amount of the offeror's indirect costs and profit applicable to the work to be performed by the proposed subcontractor(s); and (ii) a description of the added value provided by the offeror as related to the work to be performed by the proposed subcontractor(s)?		

(End of provision)

[79 FR 10688, Feb. 26, 2014]

1852.216–73 Estimated cost and cost sharing.

As prescribed in 1816.307–70(a), insert the following clause:

ESTIMATED COST AND COST SHARING (DEC 1991)

(a) It is estimated that the total cost of performing the work under this contract will be $_____.

(b) For performance of the work under this contract, the Contractor shall be reimbursed for not more than ____ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining ____ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the _____ [insert ''Limitation of Cost'' or ''Limitation of Funds''] clause, the total estimated cost to the Government is hereby established as $_____ (insert estimated Government share); this amount is the maximum Government liability.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program).

(End of clause)

[62 FR 3484, Jan. 23, 1997]

1852.216–74 Estimated cost and fixed fee.

As prescribed in 1816.307–70(b), insert the following clause:

ESTIMATED COST AND FIXED FEE (DEC 1991)

The estimated cost of this contract is _____ exclusive of the fixed fee of _____. The total estimated cost and fixed fee is _____.

(End of clause)

[62 FR 3484, Jan. 23, 1997]

1852.216–75 Payment of fixed fee.

As prescribed in 1816.307–70(c), insert the following clause:

PAYMENT OF FIXED FEE (DEC 1988)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

(End of clause)

[62 FR 3484, Jan. 23, 1997]

1852.216–76 Award fee for service contracts.

As prescribed in 1816.406–70(a), insert the following clause:

AWARD FEE FOR SERVICE CONTRACTS (APR 2012)

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216–85, ''Estimated Cost and Award Fee'' in this contract.

(b) Beginning 6* months after the effective date of this contract, the Government shall evaluate the Contractor's performance every 6* months to determine the amount of award fee earned by the contractor during the period. The Contractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government's Fee Determination Official (FDO) will determine the award fee amounts based on the Contractor's performance in accordance with [identify performance evaluation plan]. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the Contractor in writing of the evaluation results. The [insert payment office] will make payment based on [Insert method of authorizing award fee payment, e.g., issuance of unilateral modification by contracting officer].

(d) The Contracting Officer may direct the withholding of earned award fee payments until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest relative to an orderly and timely closeout of the contract. This reserve shall not exceed 15 percent of the contract's total potential award fee or $100,000, whichever is less.

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

(f)(1) Provisional award fee payments [insert ''will'' or ''will not'', as applicable] be made under this contract pending the determination of the amount of fee earned for an evaluation period. If applicable, provisional award fee payments will be made to the Contractor on a [insert the frequency of provisional payments (not more often than monthly)] basis. The total amount of award fee available in an evaluation period that will be provisionally paid is the lesser of [Insert a percent not to exceed 80 percent] or the prior period's evaluation score.

(2) Provisional award fee payments will be superseded by the final award fee evaluation for that period. If provisional payments exceed the final evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer.

(3) If the Contracting Officer determines that the Contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the Contracting Officer deems appropriate. The Contracting Officer will notify the Contractor in writing if it is determined that such discontinuance or reduction is appropriate.

(4) Provisional award fee payments [insert ''will'' or ''will not'', as appropriate] be made prior to the first award fee determination by the Government.

(g) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

*[A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405–272(a).]

(End of clause)

[77 FR 18106, Mar. 27, 2012]

1852.216–77 Award fee for end item contracts.

As prescribed in 1816.406–70(b), insert the following clause:

AWARD FEE FOR END ITEM CONTRACTS (APR 2012)

(a) The contractor can earn award fee, or base fee, if any, from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216–85, ''Estimated Cost and Award Fee'' in this contract. All award fee evaluations, with the exception of the last evaluation, will be interim evaluations. At the last evaluation, which is final, the Contractor's performance for the entire contract will be evaluated to determine total earned award fee. No award fee or base fee will be paid to the Contractor if the final award fee evaluation is ''poor/unsatisfactory.''

(b) Beginning 6* months after the effective date of this contract, the Government will evaluate the Contractor's interim performance every 6* months to monitor Contractor performance prior to contract completion and to provide feedback to the Contractor. The evaluation will be performed in accordance with [identify performance evaluation plan] to this contract. The Contractor may submit a self-evaluation of performance for each period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government will advise the Contractor in writing of the evaluation results. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c)(1) Base fee, if applicable, will be paid in [Insert ''monthly'', or less frequent period] installments based on the percent of completion of the work as determined by the Contracting Officer.

(2) Interim award fee payments will be made to the Contractor based on each interim evaluation. The amount of the interim award fee payment is limited to the lesser of the interim evaluation score or 80 percent of the fee allocated to that period less any provisional payments made during the period. All interim award fee payments will be superseded by the final award fee determination.

(3) Provisional award fee payments will [insert ''not'' if applicable] be made under this contract pending each interim evaluation. If applicable, provisional award fee payments will be made to the Contractor on a [*insert the frequency of provisional payments (not more often than monthly*) basis. The amount of award fee which will be provisionally paid in each evaluation period is limited to [Insert a percent not to exceed 80 percent] of the prior interim evaluation score (see [*insert applicable cite*]). Provisional award fee payments made each evaluation period will be superseded by the interim award fee evaluation for that period. If provisional payments made exceed the interim evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer. If the Government determines that (i) the total amount of provisional fee payments will apparently *substantially* exceed the anticipated final evaluation score, or (ii) the prior interim evaluation is ''poor/unsatisfactory,'' the Contracting Officer will direct the suspension or reduction of the future payments and/or request a prompt refund of excess payments as appropriate. Written notification of the determination will be provided to the Contractor with a

copy to the Deputy Chief Financial Officer (Finance).

(4) All interim (and provisional, if applicable) fee payments will be superseded by the fee determination made in the final award fee evaluation. The Government will then pay the Contractor, or the Contractor will refund to the Government the difference between the final award fee determination and the cumulative interim (and provisional, if applicable) fee payments. If the final award fee evaluation is ''poor/unsatisfactory'', any base fee paid will be refunded to the Government.

(5) Payment of base fee, if applicable, will be made based on submission of an invoice by the Contractor. Payment of award fee will be made by the [insert payment office] based on [Insert method of making award fee payment, e.g., issuance of a unilateral modification by the Contracting Officer].

(d) The Contracting Officer may direct the withholding of interim award fee payments until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest relative to an orderly and timely closeout of the contract. This reserve shall not exceed 15 percent of the contracts total potential award fee or $100,000, whichever is less.

(e) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

*[A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405–272(a).]

(End of clause)

[77 FR 18106, Mar. 27, 2012]

1852.216–78 Firm fixed price.

As prescribed in 1816.202–70, insert the following clause:

FIRM FIXED PRICE (DEC 1988)

The total firm fixed price of this contract is $ [Insert the appropriate amount].

(End of clause)

[62 FR 3485, Jan. 23, 1997]

1852.216–80 Task ordering procedure.

As prescribed in 1816.506–70, insert the following clause:

TASK ORDERING PROCEDURES (OCT 1996)

(a) Only the Contracting Officer may issue task orders to the Contractor, providing specific authorization or direction to perform work within the scope of the contract and as specified in the schedule. The Contractor may incur costs under this contract in performance of task orders and task order modifications issued in accordance with this clause. No other costs are authorized unless otherwise specified in the contract or expressly authorized by the Contracting Officer.

(b) Prior to issuing a task order, the Contracting Officer shall provide the Contractor with the following date:

(1) A functional description of the work identifying the objectives or results desired from the contemplated task order.

(2) Proposed performance standards to be used as criteria for determining whether the work requirements have been met.

(3) A request for a task plan from the Contractor to include the technical approach, period of performance, appropriate cost information, and any other information required to determine the reasonableness of the Contractor's proposal.

(c) Within ____ calendar days after receipt of the Contracting Officer's request, the Contractor shall submit a task plan conforming to the request.

(d) After review and any necessary discussions, the Contracting Officer may issue a task order to the Contractor containing, as a minimum, the following:

(1) Date of the order.

(2) Contract number and order number.

(3) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.

(4) Performance standards, and where appropriate, quality assurance standards.

(5) Maximum dollar amount authorized (cost and fee or price). This includes allocation of award fee among award fee periods, if applicable.

(6) Any other resources (travel, materials, equipment, facilities, etc.) authorized.

(7) Delivery/performance schedule including start and end dates.

(8) If contract funding is by individual task order, accounting and appropriation data.

(e) The Contractor shall provide acknowledgement of receipt to the Contracting Officer within ____ calendar days after receipt of the task order.

(f) If time constraints do not permit issuance of a fully defined task order in accordance with the procedures described in paragraphs (a) through (d), a task order which includes a ceiling price may be issued.

(g) The Contracting officer may amend tasks in the same manner in which they are issued.

(h) In the event of a conflict between the requirements of the task order and the Contractor's approved task plan, the task order shall prevail.

(End of clause)

Alterate I (OCT 1996). As prescribed in 1816.506–70, insert the following paragraph (i) if the contract does not include 533M reporting:

(i) Contractor shall submit monthly task order progress reports. As a minimum, the reports shall contain the following information:

(1) Contract number, task order number, and date of the order.

(2) Task ceiling price.

(3) Cost and hours incurred to date for each issued task.

(4) Costs and hours estimated to complete each issued task.

(5) Significant issues/problems associated with a task.

(6) Cost summary of the status of all tasks issued under the contract.

[62 FR 3485, Jan. 23, 1997]

1852.216–81 Estimated cost.

As prescribed in 1816.307–70(d), insert the following clause:

ESTIMATED COST (DEC 1988)

The total estimated cost for complete performance of this contract is $ [Insert total estimated cost of the contract]. See FAR clause 52.216–11, Cost Contract—No Fee, of this contract.

(End of clause)

[62 FR 3486, Jan. 23, 1997]

1852.216–83 Fixed price incentive.

As prescribed in 1816.406–70(c), insert the following clause:

FIXED PRICE INCENTIVE (OCT 1996)

The target cost of this contract is $_____. The Target profit of this contract is $_____. The target price (target cost plus target profit) of this contract is $_____. [The ceiling price is $_____.]

The cost sharing for target cost underruns is: Government ____ percent; Contractor ____ percent.

The cost sharing for target cost overruns is: Government ____ percent; Contractor ____ percent.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216–84 Estimated cost and incentive fee.

As prescribed in 1816.406–70(d), insert the following clause:

ESTIMATED COST AND INCENTIVE FEE (OCT 1996)

The target cost of this contract is $_____. The target fee of this contract is $_____. The total target cost and target fee as contemplated by the Incentive Fee clause of this contract are $_____.

The maximum fee is $_____.

The minimum fee is $_____.

The cost sharing for cost underruns is: Government ____ percent; Contractor ____ percent.

The cost sharing for cost overruns is: Government ____ percent; Contractor ____ percent.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216–85 Estimated cost and award fee.

As prescribed in 1816.406–70(e), insert the following clause:

ESTIMATED COST AND AWARD FEE (SEP 1993)

The estimated cost of this contract is $_____. The maximum available award fee, excluding base fee, if any, is $_____. The base fee is $_____. Total estimated cost, base fee, and maximum award fee are $_____.

(End of clause)

Alterate I (SEP 1993). As prescribed in 1816.405–70(e), insert the following sentence at the end of the clause:

The maximum positive performance incentive is $_____. The maximum negative performance incentive is (1).

(1) For research development hardware contracts, insert [equal to total earned award fee (including any base fee)]. For production hardware contracts, insert [$*total potential award fee amount, including any base fee)*].

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216–87 Submission of vouchers for payment.

As prescribed in 1816.307–70(e), insert the following clause:

SUBMISSION FOR VOUCHERS FOR PAYMENT (MAR 1998)

(a) The designated billing office for cost vouchers for purposes of the Prompt Payment clause of this contract is indicated below. Public vouchers for payment of costs shall include a reference to the number of this contract.

(b)(1) If the contractor is authorized to submit interim cost vouchers directly to the NASA paying office, the original voucher should be submitted to: [Insert the mailing address for submission of cost vouchers]

(2) For any period that the Defense Contract Audit Agency has authorized the Contractor to submit interim cost vouchers directly to the Government paying office, interim vouchers are not required to be sent to the Auditor, and are considered to be provisionally approved for payment, subject to final audit.

(3) Copies of vouchers should be submitted as directed by the Contracting Officer. (c) If the contractor is not authorized to submit interim cost vouchers directly to the paying office as described in paragraph (b), the contractor shall prepare and submit vouchers as follows:

(1) One original Standard Form (SF) 1034, SF 1035, or equivalent Contractor's attachment to: [Insert the appropriate NASA or DCAA mailing office address for submission of cost vouchers]

(2) Five copies of SF 1034, SF 1035A, or equivalent Contractor's attachment to the following offices by insertion in the memorandum block of their names and addresses:

(i) Copy 1 NASA Contracting Officer;

(ii) Copy 2 Auditor;

(iii) Copy 3 Contractor;

(iv) Copy 4 Contract administration office; and

(v) Copy 5 Project management office.

(3) The Contracting Officer may designate other recipients as required.

(d) Public vouchers for payment of fee shall be prepared similarly to the procedures in paragraphs (b) or (c) of this clause, whichever is applicable, and be forwarded to: [insert the mailing address for submission of fee vouchers] This is the designated billing office for fee vouchers for purposes of the Prompt Payment clause of this contract.

(e) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate voucher for the amount withheld will be required before payment for that amount may be made.

(End of clause)

[63 FR 15321, Mar. 31, 1998]

1852.216–88 Performance incentive.

As prescribed in 1816.406–70(f), insert the following clause:

PERFORMANCE INCENTIVE (JAN 1997)

(a) A performance incentive applies to the following hardware item(s) delivered under this contract: (1).

The performance incentive will measure the performance of those items against the salient hardware performance requirement, called ''unit(s) of measurement,'' e.g., months in service or amount of data transmitted, identified below. The performance incentive becomes effective when the hardware is put into service. It includes a standard performance level, a positive incentive, and a negative incentive, which are described in this clause.

(b) *Standard performance level.* At the standard performance level, the Contractor has met the contract requirement for the unit of measurement. Neither positive nor negative incentives apply when this level is achieved but not exceeded. The standard performance level for (1) ____ is established as follows: (2).

(c) Positive incentive. The Contractor earns a separate positive incentive amount for each hardware item listed in paragraph (a) of this clause when the standard performance level for that item is exceeded. The amount earned for each item varies with the units of measurement achieved, up to a maximum positive performance incentive amount of $ (3) ____ per item. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (4).

(d) *Negative incentive.* The Contractor will pay to the Government a negative incentive amount for each hardware item that fails to achieve the standard performance level. The amount to be paid for each item varies with the units of measurement achieved, up to the maximum negative incentive amount of $ (5) ____. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (6).

(e) The final calculation of positive or negative performance incentive amounts shall be done when performance (as defined by the unit of measurement) ceases or when the maximum positive incentive is reached.

(1) When the Contracting Officer determines that the performance level achieved fell below the standard performance level, the Contractor will either pay the amount due the Government or credit the next payment voucher for the amount due, as directed by the Contracting Officer.

(2) When the performance level exceeds the standard level, the Contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When performance ceases or the maximum positive incentive is reached, the Government shall calculate the

final performance incentive earned and unpaid and promptly remit it to the contractor.

(f) If performance cannot be demonstrated, through no fault of the Contractor, within [*insert number of months or years*] after the date of hardware acceptance by the Government, the Contractor will be paid [*insert percentage*] of the maximum performance incentive.

(g) The decisions made as to the amount(s) of positive or negative incentives are subject to the Disputes clause.

(1) Insert applicable item number(s) and/or nomenclature.

(2) Insert a specific unit of measurement for each hardware item listed in (1) and each salient characteristic, if more than one.

(3) Insert the maximum positive performance incentive amount (see 1816.402–270(e) (1) and (2)).

(4) Insert all units of measurement and associated dollar amounts up to the maximum performance incentive.

(5) Insert the appropriate amount in accordance with 1816.402–270(e).

(6) Insert all units of measurement and associated dollar amounts up to the maximum negative performance incentive.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216–89 Assignment and release forms.

As prescribed in 1816.307–70(f), insert the following clause:

ASSIGNMENT AND RELEASE FORMS (JUL 1997)

The Contractor shall use the following forms to fulfill the assignment and release requirements of FAR clause 52.216–7, Allowable Cost and Payment, and FAR clause 52.216–13, Allowable Cost and Payment (Facilities):

NASA Form 778, Contractor's Release;

NASA Form 779, Assignee's Release;

NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts; and

NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.

Computer generated forms are acceptable, provided that they comply with FAR clause 52.253–1, Computer Generated Forms.

(End of clause)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.216–90 Allowability of legal costs incurred in connection with a whistleblower proceeding.

As prescribed in 1816.307–70(g), use the following clause:

ALLOWABILITY OF LEGAL COSTS INCURRED IN CONNECTION WITH A WHISTLEBLOWER PROCEEDING

[AUGUST 2014]

Pursuant to section 827 of the National Defense Authorization Act for Fiscal year 2013 (Pub. L. 112–239), notwithstanding FAR clause 52.216–7, Allowable Cost and Payment—

(1) The restrictions of FAR 31.205–47(b) on allowability of costs related to legal and other proceedings also apply to any proceeding brought by a contractor employee submitting a complaint under 10 U.S.C. 2409, entitled ''Contractor employees: protection from reprisal for disclosure of certain information;'' and

(2) Costs incurred in connection with a proceeding that is brought by a contractor employee submitting a complaint under 10 U.S.C. 2409 are also unallowable if the result is an order to take corrective action under 10 U.S.C. 2409.

(End of clause)

[79 FR 43961, July 29, 2014, as amended at 79 FR 51501, Aug. 29, 2014]

1852.217–70 Property administration and reporting.

As prescribed in 1817.7004–7 and 1817.7005–4, insert the following clause:

PROPERTY ADMINISTRATION AND REPORTING (DEC 2005)

All property acquired for, and reimbursed by, NASA or transferred by NASA for use under this NASA-Interagency Purchase Request shall be controlled and accounted for in accordance with the servicing agency's normal procedures. All excess items, however, costing $500 or more and in condition Code 7 or better (GSA Condition Codes) shall be reported to the NASA originating office for possible reutilization before disposition.

(End of clause)

[70 FR 74206, Dec. 15, 2005]

1852.217–71 Phased acquisition using down-selection procedures.

As prescribed in 1817.7302(a), insert the following clause:

PHASED ACQUISITION USING DOWN-SELECTION PROCEDURES (MAY 2000)

(a) This solicitation is for the acquisition of _____ [insert Program title]. The acquisition will be conducted as a two-phased procurement using a competitive down-selection technique between phases. In this technique, two or more contractors will be selected for Phase 1. It is expected that the single contractor for Phase 2 will be chosen from among these contractors after a competitive down-selection.

(b) Phase 1 is for the _____ [insert purpose of phase]. Phase 2 is for _____ [insert general Phase 2 goals].

(c) The competition for Phase 2 will be based on the results of Phase 1, and the award criteria for Phase 2 will include successful completion of Phase 1 requirements.

(d) NASA will issue a separate, formal solicitation for Phase 2 that will include all information required for preparation of proposals, including the final evaluation factors.

(e) Phase 2 will be synopsized in the Governmentwide Point of Entry (GPE) in accordance with FAR 5.201 and 5.203 unless one of the exceptions in FAR 5.202 applies. Notwithstanding NASA's expectation that only the Phase 1 contractors will be capable of successfully competing for Phase 2, all proposals will be considered. Any other responsible source may indicate its desire to submit a proposal by responding to the Phase 2 synopsis, and NASA will provide that source a solicitation.

(f) To be considered for Phase 2 award, offerors must demonstrate a design maturity equivalent to that of the Phase 1 contractors. This, demonstration shall include the following Phase 1 deliverables upon which Phase 2 award will be based: _____ [(insert the specific Phase 1 deliverables]. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase 2 evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at any time up to and including the date upon which Phase 2 proposals are solicited.

[Insert draft Phase 2 evaluation factors (and subfactors, if available), including demonstration of successful completion of Phase 1 requirements.]

(h) Although NASA will request Phase 2 proposals from Phase contractors, submission of the Phase 2 proposal is not a requirement of the Phase 1 contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase 1 contract or any other Government contract.

(i) The anticipated schedule for conducting this phased procurement is provided for your information. These dates are projections only and are not intended to commit NASA to complete a particular action at a given time. [Insert dates below].

Phase 1 award—
Phase 2 synopsis—
Phase 2 proposal requested—
Phase 2 proposal receipt—
Phase 2 award—

(End of clause)

[63 FR 56093, Oct. 21, 1998, as amended at 65 FR 30013, May 10, 2000; 76 FR 72330, Nov. 23, 2011]

1852.217–72 Phased acquisition using progressive competition down-selection procedures.

As prescribed in 1817.7302(b), insert the following clause:

PHASED ACQUISITION USING PROGRESSIVE COMPETITION DOWN-SELECTION PROCEDURES (MAY 2000)

(a) This solicitation is for the acquisition of _____ [insert Program title]. The acquisition will be conducted as a two-phased procurement using a progressive competition down-selection technique between phases. In this technique, two or more contractors will be selected for Phase

1. It is expected that the single contractor for Phase 2 will be chosen from among these contractors after a competitive down-selection.

(b) Phase 1 is for the _____ [insert purpose of phase]. Phase 2 is for _____ [insert general Phase 2 goals].

(c) The competition for Phase 2 will be based on the results of Phase 1, and the award criteria for Phase 2 will include successful completion of Phase 1 requirements.

(d) NASA does not intend to issue a separate, formal solicitation for Phase 2. Instead, Phase 2 proposals will be requested from the Phase 1 contractors by means of _____ [indicate method of requesting proposals, e.g., by a letter]. All information required for preparation of Phase 2 proposals, including the final evaluation criteria and factors, will be provided at that time.

(e) Phase 2 will be synopsized in the Governmentwide Point of Entry (GPE) in accordance with FAR 5.201 and 5.203 unless one of the exceptions in FAR 5.202 applies. Notwithstanding NASA's expectation that only

the Phase 1 contractors will be capable of successfully competing for Phase 2, all proposals will be considered. Any other responsible source may indicate its desire to submit a proposal by responding to the Phase 2 synopsis, and NASA will provide that source to all the material furnished to the Phase 1 contractors that is necessary to submit a proposal.

(f) To be considered for Phase 2 award, offerors must demonstrate a design maturity equivalent to that of the Phase 1 contractors. This, demonstration shall include the following Phase 1 deliverables upon which Phase 2 award will be based: _____ [insert the specific Phase 1 deliverables]. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase 2 evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at any time up to and including the date upon which Phase 2 proposals are requested. Any such changes in evaluation factors will not necessitate issuance of a new, formal solicitation for Phase 2.

[Insert draft Phase 2 evaluation factors (and subfactors, if available), including demonstration of successful completion of Phase 1 requirements.]

(h) Although NASA will request Phase 2 proposals from Phase 1 contractors, submission of the Phase 2 proposal is not a requirement of the Phase 1 contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase 1 contract or any other Government contract.

(i) The anticipated schedule for conducting this phased procurement is provided for your information. These dates are projections only and are not intended to commit NASA to complete a particular action at a given time. [Insert dates below].

Phase 1 award—
Phase 2 synopsis—
Phase 2 proposal requested—
Phase 2 proposal receipt—
Phase 2 award—

(End of clause)

[63 FR 56093, Oct. 21, 1998, as amended at 65 FR 30013, May 10, 2000; 76 FR 72330, Nov. 23, 2011]

1852.219–73 Small business subcontracting plan.

As prescribed in 1819.708–70(a), insert the following provision:

SMALL BUSINESS SUBCONTRACTING PLAN (MAY 1999)

(a) This provision is not applicable to small business concerns.

(b) The contract expected to result from this solicitation will contain FAR clause 52.219–9, ''Small Business Subcontracting Plan.'' The apparent low bidder must submit the complete plan within [Insert number of days] calendar days after request by the Contracting Officer.

(End of provision)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 64 FR 25215, May 11, 1999]

1852.219–74 Use of rural area small businesses.

As prescribed in 1819.7103, insert the following clause:

USE OF RURAL AREA SMALL BUSINESS (SEP 1990)

(a) *Definitions.*

Rural area means any county with a population of fewer than twenty thousand individuals.

Small business concern, as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding under this contract, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

(b) NASA prime and subcontractors are encouraged to use their best efforts to award subcontracts to small business concerns located in rural areas.

(c) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small business concerns located in rural areas.

(d) The Contractor agrees to insert the provisions of this clause, including this paragraph (d), in all subcontracts hereunder that offer subcontracting possibilities.

(End of clause)

[55 FR 47479, Nov. 14, 1990]

1852.219–75 Small business subcontracting reporting.

As prescribed in 1819.708–70(b), insert the following clause:

SMALL BUSINESS SUBCONTRACTING REPORTING (MAY 1999)

(a) The Contractor shall submit the Summary Subcontract Report (Standard Form

(SF) 295) semiannually for the reporting periods specified in block 4 of the form. All other instructions for SF 295 remain in effect.

(b) The Contractor shall include this clause in all subcontracts that include the clause at FAR 52.219–9.

(End of clause)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 64 FR 25216, May 11, 1999]

1852.219–76 NASA 8 percent goal.

As prescribed in 1819.7003 insert the following clause:

NASA 8 PERCENT GOAL (JUL 1997)

(a) *Definitions.*

Historically Black Colleges or University, as used in this clause means an institution determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institutions, as used in this clause, means an institution of higher education meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)) which for the purposes of this clause includes a Hispanic-serving institution of higher education as defined in section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

Small disadvantaged business concern, as used in this clause, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124.

Women-owned small business concern, as used in this clause, means a small business concern (1) which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (2) whose management and daily business operations are controlled by one or more women.

(b) The NASA Administrator is required by statute to establish annually a goal to make available to small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns, at least 8 percent of NASA's procurement dollars under prime contracts or subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained.

(c) The contractor hereby agrees to assist NASA in achieving this goal by using its best efforts to award subcontracts to such entities to the fullest extent consistent with efficient contract performance.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns.

(End of clause)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.219–77 NASA Mentor-Protégé Program.

As prescribed in 1819.7215, insert the following clause:

NASA MENTOR-PROTÉGÉ PROGRAM (MONTH/YEAR)

(a) Prime contractors are encouraged to participate in the NASA Mentor-Protégé Program for the purpose of providing developmental assistance to eligible protégé entities to enhance their capabilities and increase their participation in NASA contracts.

(b) The Program consists of:

(1) Mentors, which are large businesses and prime contractors with at least one active and approved NASA subcontracting plan;

(2) Protégés, which are subcontractors to the prime contractor. Protégés must qualify as certified small disadvantaged business concerns, women-owned small business concerns, veteran-owned or service-disabled veteran-owned small business concerns, HUBZone small business concerns, Historically Black Colleges and Universities, minority institutions of higher education, meeting the qualifications defined in FAR part 2, Definitions of Parts and Term, active NASA SBIR Phase II companies or nonprofit agencies employing people who are blind or severely disabled as defined in 41 CFR Chapter 51.

(3) Mentor-protégé agreements endorsed by the cognizant NASA centers and approved by the NASA Office of Small Business Programs (OSBP);

(4) In contracts with award fee incentives, potential for payment of an award fee for voluntary participation and successful performance in the Mentor-Protégé Program, in accordance with NFS 1819.7208.

(c) Mentor participation in the Program, described in NFS 1819.72, means providing technical, managerial and financial assistance to aid protégés in developing requisite high-tech expertise and business systems to compete for and successfully perform NASA contracts and subcontracts.

(d) Contractors interested in participating in the program are encouraged to contact the NASA OSBP, Washington, DC 20546, (202) 358–2088, for further information.

(End of clause)

[74 FR 25676, May 29, 2009]

1852.219–79 Mentor requirements and evaluation.

As prescribed in 1819.7215, insert the following clause:

MENTOR REQUIREMENTS AND EVALUATION (MONTH/YEAR)

(a) The purpose of the NASA Mentor-Protégé Program is for a NASA prime contractor to provide developmental assistance to certain subcontractors qualifying as protégés.

Eligible protégés include certified small disadvantaged business concerns, women-owned small business concerns, veteran-owned or service-disabled veteran-owned small business concerns, HUBZone small business concerns, Historically Black Colleges and Universities, minority institutions of higher education, as defined in FAR part 2, Definitions of Parts and Terms, active NASA SBIR Phase II companies and non-profit agencies employing the blind or severely handicapped as defined in 41 CFR chapter 51.

(b) NASA will evaluate the contractor's performance on the following factors. If this contract includes an award fee incentive, this assessment will be accomplished as part of the fee evaluation process.

(1) Specific actions taken by the contractor, during the evaluation period, to increase the participation of protégés as subcontractors and suppliers;

(2) Specific actions taken by the contractor during this evaluation period to develop the technical and corporate administrative expertise of a protégé as defined in the agreement;

(3) To what extent the mentor and protégé have met the developmental milestones outlined in the agreement; and

(4) To what extent the entities' participation in the Mentor-Protégé Program resulted in the protégé receiving competitive contract(s) and subcontract(s) from private firms and agencies other than the mentor.

(c) Semiannual reports shall be submitted by the mentor and the protégé to the cognizant NASA center and NASA Headquarters Office of Small Business Programs (OSBP), following the semiannual report template found on the Web site at *http://www.osbp.nasa.gov*.

(d) The mentor will notify the cognizant NASA center and NASA OSBP in writing, at least 30 days in advance of the mentor's intent to voluntarily withdraw from the program or upon receipt of a protégé's notice to withdraw from the Program;

(e) At the end of each year in the Mentor-Protégé Program, the mentor and protégé, as appropriate, will formally brief the NASA Mentor-Protégé program manager, the technical program manager, and the contracting officer during a formal program review regarding Program accomplishments, as it pertains to the approved agreement.

(f) NASA may terminate mentor-protégé agreements for good cause, thereby excluding mentors or protégés from participating in the NASA Mentor-Protégé program. These actions shall be approved by the NASA OSBP. NASA shall terminate an agreement by delivering to the contractor a letter specifying the reason for termination and the effective date. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement.

(End of clause)

1852.219–80 Limitation on subcontracting—SBIR Phase I program.

As prescribed in 1819.7302(a), insert the following clause:

LIMITATION ON SUBCONTRACTING—SBIR PHASE I PROGRAM (OCT 2006)

The Contractor shall perform a minimum of two-thirds of the research and/or analytical effort (total contract price less profit) conducted under this contract. Any deviation from this requirement must be approved in advance and in writing by the Contracting Officer.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.219–81 Limitation on subcontracting—SBIR Phase II program.

As prescribed in 1819.7302(b), insert the following clause:

LIMITATION ON SUBCONTRACTING—SBIR PHASE II PROGRAM (OCT 2006)

The Contractor shall perform a minimum of one-half of the research and/or analytical effort (total contract price less profit) conducted under this contract. Any deviation from this requirement must be approved in advance and in writing by the Contracting Officer. Since the selection of R&D contractors is substantially based on the best scientific and technological sources, it is important that the Contractor not subcontract technical or scientific work without the Contracting Officer's advance approval.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.219–82 Limitation on subcontracting—STTR program.

As prescribed in 1819.7302(c), insert the following clause:

LIMITATION ON SUBCONTRACTING—STTR PROGRAM (OCT 2006)

The Contractor shall perform a minimum of 40 percent of the work under this contract (total contract price including cost sharing if any, less profit if any). A minimum of 30 percent of the work under this contract shall be performed by the research institution. Since the selection of R&D contractors is substantially based on the best scientific and technological sources, it is important that the Contractor not subcontract technical or scientific work without the Contracting Officer's advance approval.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.219–83 Limitation of the principal investigator—SBIR program.

As prescribed in 1819.7302(d), insert the following clause:

LIMITATION OF THE PRINCIPAL INVESTIGATOR—SBIR PROGRAM (OCT 2006)

The primary employment of the principal investigator (PI) shall be with the small business concern (SBC)/Contractor during the conduct of this contract. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC/Contractor. This precludes full-time employment with another organization. Deviations from these requirements must be approved in advance and in writing by the Contracting Officer and are not subject to a change in the firm-fixed price of the contract. The PI for this contract is (*insert name*).

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.219–84 Limitation of the principal investigator—STTR program.

As prescribed in 1819.7302(e), insert the following clause:

LIMITATION OF THE PRINCIPAL INVESTIGATOR—STTR PROGRAM (OCT 2006)

(a) The primary employment of the principal investigator (PI) identified in paragraph (b) of this clause is with the small business concern (SBC)/Contractor or the research institution (RI). Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC/Contractor or RI.

(b) The PI is considered to be key personnel in the performance of this contract. The SBC/Contractor, whether or not the employer of the PI, shall exercise primary management direction and control over the PI and be overall responsible for the PI's performance under this contract. Deviations from these requirements must be approved in advance and in writing by the Contracting Officer and are not subject to a change in the firm-fixed price of the contract. The PI for this contract is (*insert name*).

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.219–85 Conditions for final payment—SBIR and STTR contracts.

As prescribed in 1819.7302(f), insert the following clause:

CONDITIONS FOR FINAL PAYMENT—SBIR AND STTR CONTRACTS (OCT 2006)

As a condition for final payment under this contract, the Contractor shall provide the following certifications as part of its final payment invoice request:

During performance of this contract—

1. Essentially equivalent work performed under this contract has not been proposed for funding to another Federal agency;

2. No other Federal funding award has been received for essentially equivalent work performed under this contract;

3. Deliverable items submitted under this contract have not been submitted as deliverable items under another Federal funding award;

4. *For SBIR contracts:* The subcontracting limitation set forth in this contract was not exceeded except as approved in writing by the Contracting Officer on (*insert date of approval or modification number.*);

5. *For STTR contracts:* The subcontracting limitation set forth in this contract was not exceeded;

6. *For SBIR contracts:* The primary employment of the principal investigator (PI) identified in this SBIR contract was with the Contractor, except as approved in writing by the Contracting Officer on (*insert date of approval or modification number*); and

7. *For STTR contracts:* The primary employment of the principal investigator (PI) identified in this STTR contract was the SBC/Contractor or the research institution (RI). The PI identified in the STTR contract was considered key in the performance of this contract. The SBC/Contractor, whether or not the employer of the PI, did exercise primary management direction and control over the PI and was overall responsible for the PI's performance under this contract. Any substitutions of this individual were approved in writing by the Contracting Officer on (*insert date of approval or modification number*).

I understand that the willful provision of false information or concealing a material fact in this representation is a criminal offense under Title 18 USC, Section 1001, False Statements, as well as Title 18 U.S.C., Section 287, False Claims.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.223–70 Safety and health.

As prescribed in 1823.7004(c), insert the following clause:

SAFETY AND HEALTH (APR 2002)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. NASA's safety priority is to protect: (1) The public, (2) astronauts and pilots, (3) the NASA workforce (including contractor employees working on NASA contracts), and (4) high-value equipment and property.

(b) The Contractor shall take all reasonable safety and occupational health measures in performing this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and occupational health and with the safety and occupational health standards, specifications, reporting requirements, and any other relevant requirements of this contract.

(c) The Contractor shall take, or cause to be taken, any other safety, and occupational health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other clause of the contract.

(d) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule; or property loss of $25,000 or more, or Close Call (a situation or occurrence with no injury, no damage or only minor damage (less than $1,000) but possesses the potential to cause any type mishap, or any injury, damage, or negative mission impact) that may be of immediate interest to NASA, arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. In addition, service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule.

(e) The Contractor shall investigate all work-related incidents, accidents, and Close Calls, to the extent necessary to determine their causes and furnish the Contracting Officer a report, in such form as the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

(f)(1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. When the Contracting Officer becomes aware of noncompliance that may pose a serious or imminent danger to safety and health of the public, astronauts and pilots, the NASA workforce (including contractor employees working on NASA contracts), or high value mission critical equipment or property, the Contracting Officer shall notify the Contractor orally, with written confirmation. The Contractor shall promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (f)(1) of this clause, the Contracting Officer may invoke the stop-work order clause in this contract or any other remedy available to the Government in the event of such failure or refusal.

(g) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (g) and any applicable Schedule provisions and clauses, with appropriate changes of designations of

the parties, in all solicitations and subcontracts of every tier, when one or more of the following conditions exist:

(1) The work will be conducted completely or partly on premises owned or controlled by the Government.

(2) The work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold.

(3) The work, regardless of place of performance, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable).

(4) When the Contractor (or subcontractor or supplier) determines that the assessed risk and consequences of a failure to properly manage and control the hazard(s) warrants use of the clause.

(h) The Contractor (or subcontractor or supplier) may exclude the provisions of paragraph (g) from its solicitation(s) and subcontract(s) of every tier when it determines that the clause is not necessary because the application of the OSHA and DOT (if applicable) regulations constitute adequate safety and occupational health protection. When a determination is made to exclude the provisions of paragraph (g) from a solicitation and subcontract, the Contractor must notify and provide the basis for the determination to the Contracting Officer. In subcontracts of every tier above the micro-purchase threshold for which paragraph (g) does not apply, the Contractor (or subcontractor or supplier) shall insert the substance of paragraphs (a), (b), (c), and (f) of this clause).

(i) Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and occupational health measures under this clause.

(j) The contractor shall continually update the safety and health plan when necessary. In particular, the Contractor shall furnish a list of all hazardous operations to be performed, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence—

(1) Written hazardous operating procedures for all hazardous operations; and/or

(2) Qualification standards for personnel involved in hazardous operations.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 56 FR 12460, Mar. 26, 1991; 58 FR 51142, Sept. 30, 1993; 61 FR 5315, Feb. 12, 1996; 62 FR 14033, Mar. 25, 1997; 65 FR 37060, June 13, 2000; 65 FR 70316, Nov. 22, 2000; 66 FR 18052, Apr. 5, 2001; 67 FR 17016, Apr. 9, 2002]

1852.223–71 Frequency authorization.

As prescribed in 1823.7101, insert the following clause:

FREQUENCY AUTHORIZATION (DEC 1988)

(a) Authorization of radio frequencies required in support of this contract shall be obtained by the Contractor or subcontractor in need thereof.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contractual performance. Procedures furnished by the Contracting Officer shall be followed in obtaining radio frequency authorization.

(c) This clause, including this paragraph (c), shall be included in all subcontracts that call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

1852.223–72 Safety and Health (Short Form).

As prescribed in 1823.7001(e), insert the following clause:

SAFETY AND HEALTH (SHORT FORM) (APR 2002)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness; damage to or loss of equipment or property, or damage to the environment. NASA's safety priority is to protect: (1) The public, (2) astronauts and pilots, (3) the NASA workforce (including contractor employees working on NASA contracts), and (4) high-value equipment and property.

(b) The Contractor shall take all reasonable safety and occupational health measures consistent with standard industry practice in performing this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and occupational health and with the safety and occupational health standards, specifications,

reporting requirements, and any other relevant requirements of this contract.

(c) The Contractor shall take, or cause to be taken, any other safety, and occupational health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the Changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other clause of the contract.

(d) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. In situations where the Contracting Officer becomes aware of noncompliance that may pose a serious or imminent danger to safety and health of the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value mission critical equipment or property, the Contracting Officer shall notify the Contractor orally, with written confirmation. The Contractor shall promptly take and report any necessary corrective action. The Government may pursue appropriate remedies in the event the Contractor fails to promptly take the necessary corrective action.

(e) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (d) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that exceed the micro-purchase threshold.

(End of clause)

[66 FR 18052, Apr. 5, 2001, as amended at 67 FR 17017, Apr. 9, 2002]

1852.223–73 Safety and Health Plan.

As prescribed in 1823.7001(c), insert the following provision:

SAFETY AND HEALTH PLAN (NOV 2004)

(a) The offeror shall submit a detailed safety and occupational health plan as part of its proposal (see NPR 8715.3, NASA Safety Manual, Appendices). The plan shall include a detailed discussion of the policies, procedures, and techniques that will be used to ensure the safety and occupational health of Contractor employees and to ensure the safety of all working conditions throughout the performance of the contract.

(b) When applicable, the plan shall address the policies, procedures, and techniques that will be used to ensure the safety and occupational health of the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), and high-value equipment and property.

(c) The plan shall similarly address subcontractor employee safety and occupational health for those proposed subcontracts that contain one or more of the following conditions:

(1) The work will be conducted completely or partly on premises owned or controlled by the government.

(2) The work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold.

(3) The work, regardless of place of performance, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable).

(4) When the assessed risk and consequences of a failure to properly manage and control the hazards warrants use of the clause.

(d) This plan, as approved by the Contracting Officer, will be included in any resulting contract.

(End of provision)

Alterate I (NOV 2004) As prescribed in 1823.7001(c), delete the first sentence in paragraph (a) of the basic provision and substitute the following:

The apparent low bidder, upon request by the Contracting Officer, shall submit a detailed safety and occupational health plan (*see* NPR 8715.3, NASA Safety Manual, Appendices). The plan shall be submitted within the time specified by the Contracting Officer. Failure to submit an acceptable plan shall make the bidder ineligible for the award of a contract.

[66 FR 48361, Sept. 20, 2001, as amended at 67 FR 17017, Apr. 9, 2002; 69 FR 63459, Nov. 2, 2004]

1852.223–74 Drug- and alcohol-free workforce.

As prescribed in 1823.570–2, insert the following clause:

DRUG- AND ALCOHOL-FREE WORKFORCE (MAR 1996)

(a) *Definitions.* As used in this clause the terms ''employee,'' ''controlled substance,'' ''employee in a sensitive position,'' and ''use,

in violation of applicable law or Federal regulation, of alcohol'' are as defined in 48 CFR 1823.570–2.

(b) (1) The Contractor shall institute and maintain a program for achieving a drug- and alcohol-free workforce. As a minimum, the program shall provide for preemployment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of contractor employees in sensitive positions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Contractor may establish its testing or rehabilitation program in cooperation with other contractors or organizations.

(2) This clause neither prohibits nor requires the Contractor to test employees in a foreign country. If the Contractor chooses to conduct such testing, this does not authorize the Contractor to violate foreign law in conducting such testing.

(3) The Contractor's program shall test for the use of marijuana and cocaine. The Contractor's program may test for the use of other controlled substances.

(4) The Contractor's program shall conform to the ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'' published by the Department of Health and Human Services (59 FR 29908, June 9, 1994) and the procedures in 49 CFR part 40, ''Procedures for Transportation Workplace Drug Testing Programs,'' in which references to ''DOT'' shall be read as ''NASA'', and the split sample method of collection shall be used.

(c) (1) The Contractor's program shall provide, where appropriate, for the suspension, disqualification, or dismissal of any employee in a sensitive position in any instance where a test conducted and confirmed under the Contractor's program indicates that such individual has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance.

(2) The Contractor's program shall further prohibit any such individual from working in a sensitive position on a NASA contract, unless such individual has completed a program of rehabilitation described in paragraph (d) of this clause.

(3) The Contractor's program shall further prohibit any such individual from working in any sensitive position on a NASA contract if the individual is determined under the Contractor's program to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance and the individual meets any of the following criteria:

(i) The individual had undertaken or completed a rehabilitation program described in paragraph (d) of this clause prior to such use;

(ii) Following such determination, the individual refuses to undertake such a rehabilitation program;

(iii) Following such determination, the individual fails to complete such a rehabilitation program; or

(iv) The individual used a controlled substance or alcohol while on duty.

(d) The Contractor shall institute and maintain an appropriate rehabilitation program which shall, as a minimum, provide for the identification and opportunity for treatment of employees whose duties include responsibility for safety-sensitive, security, or National security functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

(e) The requirements of this clause shall take precedence over any state or local Government laws, rules, regulations, ordinances, standards, or orders that are inconsistent with the requirements of this clause.

(f) For any collective bargaining agreement, the Contractor will negotiate the terms of its program with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change the requirements of this clause. Employees covered under collective bargaining agreements will not be subject to the requirements of this clause until those agreements have been modified, as necessary; provided, however, that if one year after commencement of negotiation the parties have failed to reach agreement, an impasse will be determined to have been reached and the Contractor will unilaterally implement the requirements of this clause.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts in which work is performed by an employee in a sensitive position, except subcontracts for commercial items (see FAR parts 2 and 12).

(End of clause)

[61 FR 7226, Feb. 27, 1996, as amended at 69 FR 60968, Oct. 14, 2004]

1852.223–75 Major breach of safety or security.

As prescribed in 1823.7001(d), insert the following clause:

MAJOR BREACH OF SAFETY OR SECURITY (FEB 2002)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: (1) The public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value

equipment and property. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than $1 million; or in any ''willful'' or ''repeat'' violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security is an act or omission by the Contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than $250,000, or theft greater than $250,000.

(c) In the event of a major breach of safety or security, the Contractor shall report the breach to the Contracting Officer. If directed by the Contracting Officer, the Contractor shall conduct its own investigation and report the results to the Government. The Contractor shall cooperate with the Government investigation, if conducted.

Alterate I (FEB 2006) As prescribed in 1823.7001(d)(2), substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: (1) The public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value equipment and property. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination. A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than $1 million; or in any ''willful'' or ''repeat'' violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security is an act or omission by the Contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than $250,000, or theft greater than $250,000.

(End of clause)

[65 FR 37061, June 13, 2000, as amended at 65 FR 70316, Nov. 22, 2000; 66 FR 18053, Apr. 5, 2001; 67 FR 7618, Feb. 20, 2002; 71 FR 8989, Feb. 22, 2006]

1852.223–76 Federal Automotive Statistical Tool Reporting.

As prescribed at 1823.271 and 1851.205, insert the following clause:

FEDERAL AUTOMOTIVE STATISTICAL TOOL REPORTING (JUL 2003)

If authorized to operate Government-owned or -leased vehicles, including interagency fleet management system (IFMS) vehicles or related services in performance of this contract, the Contractor shall report the data describing vehicle usage required by the Federal Automotive Statistical Tool (FAST) by October 15 of each year. FAST is accessed through *http://fastweb.inel.gov/*.

(End of clause)

[68 FR 43334, July 22, 2003]

1852.225–8 Duty-free entry of space articles.

As prescribed in 1825.1101(e), add the following paragraph (k) to the basic clause at FAR 52.225–8:

(k) The following supplies will be given duty-free entry:

[Insert the supplies that are to be accorded duty-free entry.]

(End of addition)

[65 FR 10033, Feb. 25, 2000]

1852.225–70 Export Licenses.

As prescribed in 1825.1103–70(b), insert the following clause:

EXPORT LICENSES (FEB 2000)

(a) The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120–130, and the Export Administration Regulations (EAR), 15 CFR parts 730–799, in the performance of this contract. In the absence of available license exemptions/exceptions, the Contractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at [insert name of NASA installation], where the foreign person will have access to export-controlled technical data or software.

(c) The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

(End of clause)

Alterate I (FEB 2000). As prescribed in 1825.1103–70(b), add the following paragraph (e) as Alternate I to the clause:

(e) The Contractor may request, in writing, that the Contracting Officer authorizes it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Contracting Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

[65 FR 6916, Feb. 11, 2000, as amended at 65 FR 10033, Feb. 25, 2000]

1852.225–72 [Reserved]

1852.227–11 Patent Rights—Retention by the Contractor (Short Form).

As prescribed at 1827.303–70(a), modify the clause at FAR 52.227–11 by adding the following subparagraph (5) to paragraph (c) of the basic clause; adding the following subparagraph (5) to paragraph (f); and using the following subparagraph (2) in lieu of subparagraph (g)(2) of the basic clause:

(c)(5) The Contractor may use whatever format is convenient to disclose subject inventions required in subparagraph (c)(1). NASA prefers that the contractor use either the electronic or paper version of NASA Form 1679, Disclosure of Invention and New Technology (Including Software) to disclose subject inventions. Both the electronic and paper versions of NASA Form 1679 may be accessed at the electronic New Technology Reporting Web site *http://invention.nasa.gov*.

(End of addition)

(f)(5) The Contractor shall provide the Contracting Officer the following:

(i) A listing every 12 months (or such longer period as the Contracting Officer may specify) from the date of the contract, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the contract listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a coinventor.

(End of addition)

(g)(2) The Contractor shall include the clause in the NASA FAR Supplement at 1852.227–70, New Technology, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, research, design, or engineering work to be performed by other than a small business firm or nonprofit organization.

(End of substitution)

[67 FR 30604, May 7, 2002]

1852.227–14 Rights in data—General.

As prescribed in 1827.409(a), add the following subparagraph (3) to paragraph (d) of the basic clause at FAR 52.227–14:

(3)(i) The Contractor agrees not to establish claims to copyright, publish or release to others any computer software first produced in the performance of this contract without the Contracting Officer's prior written permission.

(ii) If the Government desires to obtain copyright in computer software first produced in the performance of this contract and permission has not been granted as set forth in paragraph (d)(3)(i) of this clause, the Contracting Officer may direct the contractor to assert, or authorize the assertion of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(iii) Whenever the word ''establish'' is used in this clause, with reference to a claim to copyright, it shall be construed to mean ''assert''.

(End of addition)

[55 FR 27089, June 29, 1990, as amended at 60 FR 47312, Sept. 12, 1995; 62 FR 36734, July 9, 1997]

1852.227–17 Rights in data—Special works.

As prescribed in 1827.409(i), add the following paragraph (f) to the basic clause at FAR 52.227–17:

(f) Whenever the words ''establish'' and ''establishment'' are used in this clause, with reference to a claim to copyright, they shall be construed to mean ''assert'' and ''assertion'', respectively.

(End of addition)

[60 FR 47312, Sept. 12, 1995. Redesignated at 61 FR 5315, Feb. 12, 1996, as amended at 62 FR 36734, July 9, 1997]

1852.227–19 Commercial computer software—Restricted rights.

(a) As prescribed in 1827.409(k)(i), add the following paragraph (e) to the basic clause at FAR 52.227–19:

(e) For the purposes of receiving updates, correction notices, consultation information, or other similar information regarding any computer software delivered under this contract/purchase order, the NASA Contracting Officer or the NASA Contracting Officer's Technical Representative/User may sign any vendor supplied agreements, registration forms, or cards and return them directly to the vendor; however, such signing shall not alter any of the rights or obligations of either NASA or the vendor set forth in this clause or elsewhere in this contract/purchase order.

(End of addition)

(b) As prescribed in 1827.409(k)(ii), add the following paragraph (f) to the basic clause at FAR 52.227–19:

(f) Subject to paragraphs (a) through (e) above, those applicable portions of the Contractor's standard commercial license or lease agreement pertaining to any computer software delivered under this purchase order/contract that are consistent with Federal laws, standard industry practices, and the Federal Acquisition Regulation (FAR) shall be incorporated into and made part of this purchase order/contract.

(End of addition)

[55 FR 27090, June 29, 1990, as amended at 55 FR 47480, Nov. 14, 1990; 55 FR 53153, Dec. 27, 1990; 62 FR 36734, July 9, 1997]

1852.227–70 New technology.

As prescribed in 1827.303–70(b), insert the following clause:

NEW TECHNOLOGY (NOV 1998)

(a) *Definitions. Administrator*, as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

Contract, as used in this clause, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

Made, as used in this clause, means conception or first actual reduction to practice; *provided*, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

Nonprofit organization, as used in this clause, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application, as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Reportable item, as used in this clause, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectible under Title 17 of the United States Code.

Small business firm, as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3–8 for small business contractors and in 13 CFR 121.3–12 for small business subcontractors will be used.)

Subject invention, as used in this clause, means any reportable item which is or may be patentable or otherwise protectible under Title 35 of the United States Code, or any novel variety of plant that is or may be protectible under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

(b) *Allocation of principal rights*—(1) *Presumption of title*. (i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called ''the Act''), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Contractor submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Contractor may nevertheless file the statement described in paragraph (b)(1)(i) of this clause. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Contractor whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(2) *Property rights in subject inventions*. Each subject invention for which the presumption of paragraph (b)(1)(i) of this clause is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this clause.

(3) *Waiver of rights*. (i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, have adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, Contractors may petition, either prior to execution of the contract or within 30 days after execution of the contract, for advance waiver of rights to any or all of the inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this clause, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) *Minimum rights reserved by the Government*. (1) With respect to each subject invention for which a waiver of rights is applicable in accordance with 14 CFR part 1245, subpart 1, the Government reserves—

(i) An irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor*. (1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR part 404, Licensing of Government Owned Inventions. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal to the Administrator any decision concerning the revocation or modification of its license.

(e) *Invention identification, disclosures, and reports*. (1) The Contractor shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Contractor personnel responsible for the administration of this New Technology clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor will disclose each reportable item to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of this New Technology clause or, if earlier, within six months after the Contractor becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Contractor for such invention.

(3) The Contractor may use whatever format is convenient to disclose reportable items required in subparagraph (e)(2). NASA prefers that the Contractor use either the electronic or paper version of NASA Form 1679, Disclosure of Invention and New Technology (Including Software) to disclose reportable items. Both the electronic and paper versions of NASA Form 1679 may be accessed at the electronic New Technology Reporting Web site *http://invention.nasa.gov*.

(4) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there

are no such inventions) and that the procedures required by paragraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(5) The Contractor agrees, upon written request of the Contracting Officer, to furnish additional technical and other information available to the Contractor as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(6) The Contractor agrees, subject to section 27.302(i), of the Federal Acquisition Regulation (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintained the procedures required by paragraph (e)(1) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing reportable items pursuant to paragraph (e)(1) of this clause;

(ii) Disclose any reportable items pursuant to paragraph (e)(2) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(3)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of reportable items required by paragraph (e)(2) of this clause, and an acceptable final report pursuant to paragraph (e)(3)(ii) of this clause.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.* (1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall—

(i) Include this clause (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause at FAR 52.227–11 (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and NASA

with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The subcontractor will retain all rights provided for the Contractor in the clause of paragraph (h)(1)(i) or (ii) of this clause, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(i) *Preference for United States industry*. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 54 FR 53631, Dec. 29, 1989; 60 FR 40521, Aug. 9, 1995; 62 FR 36734, July 9, 1997; 63 FR 63209, Nov. 12, 1998; 67 FR 30604, May 7, 2002]

1852.227–71 Requests for waiver of rights to inventions.

As prescribed in 1827.30–70(c), insert the following provision in all solicitations that include the clause at 1852.227–70, New Technology:

REQUESTS FOR WAIVER OF RIGHTS TO INVENTIONS (APR 1984)

(a) In accordance with the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, waiver of rights to any or all inventions made or that may be made under a NASA contract or subcontract with other than a small business firm or a domestic nonprofit organization may be requested at different time periods. Advance waiver of rights to any or all inventions that may be made under a contract or subcontract may be requested prior to the execution of the contract or subcontract, or within 30 days after execution by the selected contractor. In addition, waiver of rights to an identified invention made and reported under a contract or subcontract may be requested, even though a request for an advance waiver was not made or, if made, was not granted.

(b) Each request for waiver of rights shall be by petition to the Administrator and shall include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address and telephone number of the counsel; the signature of the petitioner or authorized representative; and the date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individual identified invention; whether foreign rights are also requested and, if so, the countries, and a citation of the specific section or sections of the regulations under which such rights are requested; and the name, address, and telephone number of the party with whom to communicate when the request is acted upon. Requests for advance waiver of rights should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) Petitions for advance waiver, prior to contract execution, must be submitted to the Contracting Officer. All other petitions will be submitted to the Patent Representative designated in the contract.

(d) Petitions submitted with proposals selected for negotiation of a contract will be forwarded by the Contracting Officer to the installation Patent Counsel for processing and then to the Inventions and Contributions Board. The Board will consider these petitions and where the Board makes the findings to support the waiver, the Board will recommend to the Administrator that waiver be granted, and will notify the petitioner and the Contracting Officer of the Administrator's determination. The Contracting Officer will be informed by the Board whenever there is insufficient time or information or other reasons to permit a decision to be made without unduly delaying the execution of the contract. In the latter event, the petitioner will be so notified by the Contracting Officer. All other petitions will be processed by installation Patent Counsel and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board

notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in the Regulations.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 36734, July 9, 1997]

1852.227–72 Designation of new technology representative and patent representative.

As prescribed in 1827.303–70(d), insert the following clause:

DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE (JUL 1997)

(a) For purposes of administration of the clause of this contract entitled ''New Technology'' or ''Patent Rights—Retention by the Contractor (Short Form),'' whichever is included, the following named representatives are hereby designated by the Contracting Officer to administer such clause:

Title	Office code	Address (including zip code)
	New Technology Representative Patent Representative	

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring a ''New Technology'' clause or ''Patent Rights—Retention by the Contractor (Short Form)'' clause, unless otherwise authorized or directed by the Contracting Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 1827.305–370 of the NASA FAR Supplement.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 36734, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.227–84 Patent rights clauses.

The contracting officer shall insert the following provision as prescribed in 1827.303–70(e):

PATENT RIGHTS CLAUSES (DEC 1989)

This solicitation contains the patent rights clauses of FAR 52.227–11 (as modified by the NFS) and NFS 1852.227–70. If the contract resulting from this solicitation is awarded to a small business or nonprofit organization, the clause at NFS 1852.227–70 shall not apply. If the award is to other than a small business or nonprofit organization, the clause at FAR 52.227–11 shall not apply.

(End of provision)

[54 FR 53631, Dec. 29, 1989, as amended at 62 FR 36735, July 9, 1997]

1852.227–85 Invention reporting and rights—Foreign.

As prescribed in 1827.303–70(f), insert the following clause:

INVENTION REPORTING AND RIGHTS—FOREIGN (APR 1986)

(a) As used in this clause, the term ''invention'' means any invention, discovery or improvement, and ''made'' means the conception or first actual demonstration that the invention is useful and operable.

(b) The Contractor shall report promptly to the Contracting Officer each invention made in the performance of work under this contract. The report of each such invention shall:

(1) Identify the inventor(s) by full name; and

(2) Include such full and complete technical information concerning the invention as is necessary to enable an understanding of the nature and operation thereof.

(c) The Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration the full right, title and interest in and to each such invention throughout the world, except for the State in which this contract is to be performed. As to such State, Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration only an irrevocable, nontransferable, nonexclusive, royalty-free license to practice each such invention by or on behalf of the United States of America or any foreign government pursuant to any treaty or agreement with the United States of America, provided that Contractor within a reasonable time files a patent application in that State

for each such invention. Where Contractor does not elect to file such patent application for any such invention in that State, full right, title and interest in and to such invention in that State shall reside in the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

(d) The Contractor agrees to execute or to secure the execution of such legal instruments as may be necessary to confirm and to protect the rights granted by paragraph (c) of this clause, including papers incident to the filing and prosecution of patent applications.

(e) Upon completion of the contract work, and prior to final payment, Contractor shall submit to the Contracting Officer a final report listing all inventions reportable under this contract or certifying that no such inventions have been made.

(f) In each subcontract, the Contractor awards under this contract where the performance of research, experimental design, engineering, or developmental work is contemplated, the Contractor shall include this clause and the name and address of the Contracting Officer.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 36735, July 9, 1997]

1852.227–86 Commercial computer software—Licensing.

As prescribed in 1827.409–70, insert the following clause:

COMMERCIAL COMPUTER SOFTWARE—LICENSING (DEC 1987)

(a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) of this clause. Where the vendor/contractor proposes its standard commercial software license, those applicable portions thereof consistent with Federal laws, standard industry practices, the Federal Acquisition Regulations (FAR) and the NASA FAR Supplement, including the restricted rights in paragraph (d) of this clause, are incorporated into and made a part of this purchase order/contract.

(b) Although the vendor/contractor may not propose its standard commercial software license until after this purchase order/contract has been issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this purchase order/contract under the same terms and conditions as in paragraph (a) of this clause. For purposes of receiving updates, correction notices, consultation, and similar activities on the computer software, the NASA Contracting Officer or the NASA Contracting Officer's Technical Representative/User may sign any agreement, license, or registration form or card and return it directly to the vendor/contractor; however, such signing shall not alter any of the terms and conditions of this clause.

(c) The vendor's/contractor's acceptance is expressly limited to the terms and conditions of this purchase order/contract. If the specified computer software is shipped or delivered to NASA, it shall be understood that the vendor/contractor has unconditionally accepted the terms and conditions set forth in this clause, and that such terms and conditions (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.

(d) The following restricted rights shall apply:

(1) The commercial computer software may not be used, reproduced, or disclosed by the Government except as provided below or otherwise expressly stated in the purchase order/contract.

(2) The commercial computer software may be—

(i) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraph (a) or (b) of this clause;

(ii) Reproduced for safekeeping (archives) or backup purposes;

(iii) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(iv) Disclosed and reproduced for use by Government contractors or their subcontractors in accordance with the restricted rights in paragraphs (d)(2) (i), (ii), and (iii) of this clause; provided they have the Government's permission to use the computer software and have also agreed to protect the computer software from unauthorized use and disclosure.

(3) If the incorporated vendor's/contractor's software license contains provisions or rights that are less restrictive than the restricted rights in paragraph (d)(2) of this clause, then the less restrictive provisions or rights shall prevail.

(4) If the computer software is published, copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the rights in paragraphs (d)(2) and (3) of this clause.

(5) The computer software may be marked with any appropriate proprietary notice that is consistent with the rights in paragraphs (d) (2), (3), and (4) of this clause.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990; 62 FR 36735, July 9, 1997]

1852.228–70 Aircraft ground and flight risk.

As prescribed in 1828.370(a), insert the following clause. The purpose of this clause is to have the Government assume risks that generally entail unusually high insurance premiums and are not covered by the contractor's contents, work-in-process, and similar insurance. Since the definitions in the clause may not cover every situation that should be covered to achieve this purpose, the clause may be modified as follows: If the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft, the definition of ''aircraft'' should be modified to specify that the aircraft has reached a point of manufacture comparable to that specified in the standard definition, which is written for conventional winged aircraft. The definition of ''in the open'' may be modified to include ''hush houses,'' test hangars, comparable structures, and other designated areas. In addition, clause paragraph (d)(3) may be modified to provide for Government assumption of risk of transportation by conveyance on streets or highways if the contracting officer determines that this transportation is limited to the vicinity of the contractor's premises and is merely incident to work being performed under the contract.

AIRCRAFT GROUND AND FLIGHT RISK (OCT 1996)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction.

(b) For the purposes of this clause, the following definitions apply:

(1) Unless otherwise specifically provided in the Schedule, ''aircraft'' includes—

(i) Aircraft (including both complete aircraft and aircraft in the course of being manufactured, disassembled, or reassembled; provided that an engine, wing, or a portion of a wing is attached to the fuselage) to be furnished to the Government under this contract (whether before or after Government acceptance); and

(ii) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract, including all property installed in, being installed in, or temporarily removed from them, unless the aircraft and property are covered by a separate bailment agreement.

(2) ''In the open'' means located wholly outside of buildings on the Contractor's premises, or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government are considered to be in the open at all times while in the Contractor's possession, care, custody, or control.

(3) ''Flight'' includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises.

(ii) With respect to seaplanes, flight commences with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises; provided, however, that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this

contract, or landings approved by the Contracting Officer in writing.

(4) ''Contractor's premises'' means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(5) ''Operation'' means operations and tests, other than on any production line, of aircraft not in flight, whether or not the aircraft is in the open or in motion. It includes operations and tests of equipment, accessories, and power plants only when installed in aircraft.

(6) ''Flight crew members'' means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when requirement or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(7) ''Contractor's managerial personnel'' means the Contractor's directors, officers, and any managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business or of the Contractor's operations at any one plant, a separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to paragraph (c)(3) of this clause. If the Contracting Officer finds that an aircraft is in the open under unreasonable conditions, the Contracting Officer shall notify the Contractor in writing of the conditions found to be unreasonable and require the Contractor to correct them within a reasonable time.

(2) Upon receipt of this notice, the Contractor shall act promptly to correct these conditions, regardless of whether it agrees that they are in fact unreasonable. To the extent that the Contracting Officer may later determine that they were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs incurred in correcting them, and the contract shall be modified in writing accordingly.

(3)(i) If the Contracting Officer finds that the Contractor has failed to act promptly to correct unreasonable conditions or has failed to correct them within a reasonable time, the Contracting Officer may by written notice terminate the Government's assumption of risk under this clause for any aircraft which is in the open under those conditions. This termination shall be effective at 12:01 A.M. on the 15th day following the day of receipt by the Contractor of the notice.

(ii) If the Contracting Officer later determines that the Contractor acted promptly to correct the conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made to compensate the Contractor for any additional costs incurred as a result of the termination, and the contract shall be modified in writing accordingly.

(4) If the Government's assumption of risk under this clause is terminated in accordance with paragraph (c)(3) of this clause, the risk of loss with respect to Government-furnished property shall be determined in accordance with the Government property clause of this contract, if any, until the Government's assumption of risk is reinstated in accordance with paragraph (c)(5) of this clause.

(5)(i) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government. The Government may or may not elect to reassume the risks and relieve the Contractor of liabilities as provided in this clause, and the Contracting Officer shall notify the Contractor of the Government's election.

(ii) If, after correction of the conditions, the Government elects to reassume the risks and relieve the Contractor of liabilities, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending from the end of the third working day after the Contractor notifies the Government of the correction until the Government notifies the Contractor of that election.

(iii) If the Government elects not to reassume the risks and the conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending after the third working day referred to in paragraph (c)(5)(ii) of this clause.

(d) The Government's assumption of risk shall not extend to damage to, or loss or destruction of aircraft—

(1) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for protecting and preserving aircraft in the open and during operation, in accordance with sound industrial practice;

(2) Sustained during flight if the flight crew members conducting the flight have not been approved in writing by the Contracting Officer;

(3) While in the course of transportation by rail or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) The extent that the damage, loss, or destruction is in fact covered by insurance;

(5) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless this damage is the result of other loss, damage, or destruction covered by this clause (except that, in

the case of Government-furnished property, if the damage consists of reasonable wear and tear or deterioration or results from an inherent defect in such property, this exclusion shall not apply); or

(6) Sustained while the aircraft is being worked upon and directly resulting from the work, including but not limited to any repairing, adjusting, servicing, or maintenance operation, unless the damage, loss, or destruction is of a type that would be covered by insurance that would customarily have been maintained by the Contractor at the time of the damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e)(1) With the exception of damage to, or loss or destruction of, aircraft in flight, the Government's assumption of risk under this clause shall not extend to the first $1,000 of loss or damage resulting from each separately occurring event. The Contractor assumes the risk of and shall be responsible for the first $1,000 of loss of or damage to aircraft in the open or during operation resulting from each separately occurring event, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel.

(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor under this paragraph (e). If the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) No subcontractor may be relieved from liability for damage to, or loss or destruction of, aircraft while in its possession or control, except to the extent that the subcontract, with the Contracting Officer's prior written approval, provides for relief of the subcontractor from that liability. In the absence of such approval, the subcontract shall require the return of the aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. If a subcontractor has not been relieved from liability and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for that damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as this clause may otherwise authorize, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h)(1) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, separate damaged and undamaged aircraft, and put all aircraft in the best possible order. Further, except in cases covered by paragraph (e) of this clause, the Contractor should furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) Any insurance covering any part of the interest in the commingled property.

(2) Except in cases covered by paragraph (e) of this clause, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract shall be modified in writing accordingly.

(i)(1) If, before delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of that damage, loss, or destruction, the Government shall either

(i) Require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage or

(ii) Terminate this contract with respect to that aircraft.

(2) If the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and the contract shall be modified in writing accordingly.

(3) If this contract is terminated under this paragraph (i)(1)(ii) with respect to the aircraft, and under this clause the Government has assumed the risk of the damage, loss, or destruction, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amounts the Contracting Officer determines (i) that it would have cost the Contractor to complete the aircraft (or any work to be performed on it), together with any anticipated profit on the uncompleted work and (ii) to be the value, if any, of the damaged aircraft or any remaining portion

of it retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts of it, and, if the Contractor incurs additional costs as a result of such disposition, a further equitable adjustment shall be made in the amount due to the Contractor.

(j)(1) If the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under this clause and for which the Contractor has been compensated by the Government, it shall equitably reimburse the Government.

(2) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suits and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

[61 FR 55772, Oct. 29, 1996]

1852.228–71 Aircraft flight risks.

(a) As prescribed in 1828.311–2, insert the following clause:

AIRCRAFT FLIGHT RISKS (DEC 1988)

(a) Notwithstanding any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance—Liability to Third Persons clause), the Contractor shall not: (1) Be relieved of liability for damage to, or loss or destruction of, aircraft sustained during flight or (2) be reimbursed for liabilities to third persons for loss of or damage to property or for death or bodily injury caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause—

(1) Unless otherwise specifically provided in the Schedule, ''aircraft'' includes any aircraft, whether furnished by the Contractor under this contract (either before or after Government acceptance) or furnished by the Government to the Contractor under this contract, including all Government property placed or installed or attached to the aircraft, unless the aircraft and property are covered by a separate bailment agreement.

(2) ''Flight'' includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) With respect to seaplanes, flight commences with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device and continues until the aircraft has been re-engaged to any launching platform or device.

(3) ''Flight crew members'' means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(c) (1) If any aircraft is damaged, lost, or destroyed during flight and the amount of the damage, loss, or destruction exceeds $100,000 or 20 percent of the estimated cost, exclusive of any fee, of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction under the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause of this contract or under paragraph (a) of this clause, an equitable adjustment for any resulting repair, restoration, or replacement required under this contract shall be made: (i) In the estimated cost, the delivery schedule, or both and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly.

(2) In determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction shall be taken into consideration.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 61 FR 55774, Oct. 29, 1996]

1852.228–73 Bid bond.

As prescribed in 1828.101–70, insert the following provision:

BID BOND (OCT 1988)

(a) Each bidder shall submit with its bid a bid bond (Standard Form 24) with good and sufficient surety or sureties acceptable to

the Government, or other security as provided in Federal Acquisition Regulation clause 52.228–1, in the amount of twenty percent (20%) of the bid price, or $3 million, whichever is the lower amount.

(b) Bid bonds shall be dated the same date as the bid or earlier.

(End of provision)

1852.228–75 Minimum insurance coverage.

As prescribed in 1828.372, insert the following clause:

MINIMUM INSURANCE COVERAGE (OCT 1988)

The Contractor shall obtain and maintain insurance coverage as follows for the performance of this contract:

(a) Worker's compensation and employer's liability insurance as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The employer's liability coverage shall be at least $100,000, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) Comprehensive general (bodily injury) liability insurance of at least $500,000 per occurrence.

(c) Motor vehicle liability insurance written on the comprehensive form of policy which provides for bodily injury and property damage liability covering the operation of all motor vehicles used in connection with performing the contract. Policies covering motor vehicles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury liability and $20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Comprehensive general and motor vehicle liability policies shall contain a provision worded as follows:

''The insurance company waives any right of subrogation against the United States of America which may arise by reason of any payment under the policy.''

(e) When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance of at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of clause)

1852.228–76 Cross-waiver of liability for international space station activities.

As prescribed in 1828.371(c) and (d), insert the following clause:

CROSS-WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES (OCT 2012)

(a) The Intergovernmental Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station (IGA) for the International Space Station (ISS) contains a cross-waiver of liability provision to encourage participation in the exploration, exploitation, and use of outer space through the ISS. The objective of this clause is to extend this cross-waiver of liability to NASA contracts in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the International Space Station (ISS). The Parties intend that this cross-waiver of liability be broadly construed to achieve this objective.

(b) As used in this clause, the term:

(1) ''*Agreement*'' refers to any NASA Space Act agreement that contains the cross-waiver of liability provision authorized by 14 CFR 1266.102.

(2) ''*Damage*'' means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential Damage.

(3) ''*Launch Vehicle*'' means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads or persons, or both.

(4) ''*Partner State*'' includes each Contracting Party for which the IGA has entered into force, pursuant to Article 25 of the IGA or pursuant to any successor agreement. A Partner State includes its Cooperating Agency. It also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan's Cooperating Agency in the implementation of that MOU.

(5) ''*Party*'' means a party to a NASA Space Act agreement involving activities in connection with the ISS and a party that is neither the prime contractor under this contract nor a subcontractor at any tier.

(6) ''*Payload*'' means all property to be flown or used on or in a Launch Vehicle or the ISS.

(7) ''*Protected Space Operations*'' means all Launch or Transfer Vehicle activities, ISS activities, and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of the IGA, MOUs concluded pursuant to the IGA, implementing arrangements, and contracts to perform work in support of NASA's obligations under these Agreements. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, the ISS, Payloads, or instruments, as well as related support equipment and facilities and services; and

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. ''Protected Space Operations'' also includes all activities related to evolution of the ISS, as provided for in Article 14 of the IGA. ''Protected Space Operations'' excludes activities on Earth which are conducted on return from the ISS to develop further a Payload's product or process for use other than for ISS-related activities in implementation of the IGA.

(8) ''*Related Entity*'' means:

(i) A contractor or subcontractor of a Party or a Partner State at any tier;

(ii) A user or customer of a Party or a Partner State at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Party or a Partner State at any tier. The terms ''contractor'' and ''subcontractor'' include suppliers of any kind.

(9) ''*Transfer Vehicle*'' means any vehicle that operates in space and transfers Payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A Transfer Vehicle also includes a vehicle that departs from and returns to the same location on a space object.

(c) Cross-waiver of liability:

(1) The Contractor agrees to a cross-waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

(i) A Party as defined in (b)(5) of this clause;

(ii) A Partner State other than the United States of America;

(iii) A Related Entity of any entity identified in paragraph (c)(1)(i) or (c)(1)(ii) of this clause; or

(iv) The employees of any of the entities identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(2) In addition, the contractor shall, by contract or otherwise, extend the cross-waiver of liability set forth in paragraph (c)(1) of this clause to its subcontractors at any tier by requiring them, by contract or otherwise, to:

(i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause; and

(ii) Require that their subcontractors waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects,* which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between the Government and its own contractors or between its own contractors and subcontractors;

(ii) Claims made by a natural person, his/her estate, survivors or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of, such person;

(iii) Claims for Damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Claims for Damage resulting from a failure of the contractor to extend the cross-waiver of liability to its subcontractors and related entities, pursuant to paragraph (c)(2) of this clause;

(vi) Claims by the Government arising out of or relating to the contractor's failure to perform its obligations under this contract.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when 49 U.S.C. Subtitle IX, Chapter 701 is applicable.

(End of clause)

[77 FR 59342, Sept. 27, 2012]

1852.228–78 Cross-waiver of liability for science or space exploration activities unrelated to the International Space Station.

As prescribed in 1828.371(b) and (d), insert the following clause:

CROSS-WAIVER OF LIABILITY FOR SCIENCE OR SPACE EXPLORATION ACTIVITIES UNRELATED TO THE INTERNATIONAL SPACE STATION (OCT 2012)

(a) The purpose of this clause is to extend a cross-waiver of liability to NASA contracts for work done in support of Agreements between Parties involving Science or Space Exploration activities that are not related to the International Space Station (ISS) but involve a launch. This cross-waiver of liability shall be broadly construed to achieve the objective of furthering participation in space exploration, use, and investment.

(b) As used in this clause, the term:

(1) ''*Agreement*'' refers to any NASA Space Act agreement that contains the cross-waiver of liability provision authorized in 14 CFR 1266.104.

(2) ''*Damage*'' means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential Damage;

(3) ''*Launch Vehicle*'' means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads or persons, or both.

(4) ''*Party*'' means a party to a NASA Space Act agreement for Science or Space Exploration activities unrelated to the ISS that involve a launch and a party that is neither the prime contractor under this contract nor a subcontractor at any tier hereof.

(5) ''*Payload*'' means all property to be flown or used on or in a Launch Vehicle.

(6) ''*Protected Space Operations*'' means all Launch or Transfer Vehicle activities and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of an Agreement for Science or Space Exploration activities unrelated to the ISS that involve a launch. Protected Space Operations begins at the signature of the Agreement and ends when all activities done in implementation of the Agreement are completed. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, Payloads, or instruments, as well as related support equipment and facilities and services; and

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services.

Protected Space Operations excludes activities on Earth which are conducted on return from space to develop further a payload's product or process other than for the activities within the scope of an Agreement.

(7) ''*Related entity*'' means:

(i) A contractor or subcontractor of a Party at any tier;

(ii) A user or customer of a Party at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Party at any tier.

NOTE TO PARAGRAPH (A)(7): The terms ''contractors'' and ''subcontractors'' include suppliers of any kind.

(8) ''*Transfer Vehicle*'' means any vehicle that operates in space and transfers Payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A Transfer Vehicle also includes a vehicle that departs from and returns to the same location on a space object.

(c) Cross-waiver of liability:

(1) The Contractor agrees to a waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

(i) A Party;

(ii) A Party to another NASA Agreement or contract that includes flight on the same Launch Vehicle;

(iii) A Related Entity of any entity identified in paragraphs (c)(1)(i) or (c)(1)(ii) of this clause; or

(iv) The employees of any of the entities identified in (c)(1)(i) through (iii) of this clause.

(2) The Contractor agrees to extend the cross-waiver of liability as set forth in paragraph (c)(1) of this clause to its own subcontractors at all tiers by requiring them, by contract or otherwise, to:

(i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause; and

(ii) Require that their Related Entities waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects,* entered into force on 1 September 1972, in which the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between the Government and its own contractors or between its own contractors and subcontractors;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health, or death of such person;

(iii) Claims for Damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Claims for damages resulting from a failure of the contractor to extend the cross-waiver of liability to its subcontractors and related entities, pursuant to paragraph (c)(2) of this clause; or

(vi) Claims by the Government arising out of or relating to a contractor's failure to perform its obligations under this contract.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when 49 U.S.C. Subtitle IX, Chapter 701 is applicable.

[77 FR 59342, Sept. 27, 2012]

1852.228–80 Insurance—Immunity From Tort Liability.

As prescribed in 1828.311–270(b), insert the following provision:

INSURANCE—IMMUNITY FROM TORT LIABILITY (SEP 2000)

If the offeror is partially or totally immune from tort liability to third persons as a State agency or as a charitable institution, the offeror will include in its offer a representation to that effect. When the successful offeror represented in its offer that it is immune from tort liability, the following clause(s) will be included in the resulting contract:

(a) When the offeror represents that it is partially immune from tort liability to third persons as a State agency or as a charitable institution, the clause at FAR 52.228–7, Insurance—Liability to Third Persons, and the associated NFS clause 1852.228–81, Insurance—Partial Immunity From Tort Liability, will be included in the contract.

(b) When the offeror represents that it is totally immune from tort liability to third persons as a State agency or as a charitable institution. the clause at NFS 1852.228–82 Insurance—Total Immunity From Tort Liability, will be included in the contract.

(End of provision)

[65 FR 54440, Sept. 8, 2000]

1852.228–81 Insurance—Partial Immunity From Tort Liability.

As prescribed in 1828.311–270(c), insert the following clause:

INSURANCE—PARTIAL IMMUNITY FROM TORT LIABILITY (SEP 2000)

(a) Except as provided for in paragraph (b) of this clause, the Government does not assume any liability to third persons, nor will the Government reimburse the contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract; and

(b) The contractor need not provide or maintain insurance coverage as required by paragraph (a) of FAR clause 52.228–7, Insurance—Liability to Third Persons, provided that the contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of FAR clause 52.228–7, for liabilities to third person for which the contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(End of clause)

[65 FR 54440, Sept. 8, 2000]

1852.228–82 Insurance—Total Immunity From Tort Liability.

As prescribed in 1828.311–270(d), insert the following clause:

INSURANCE—TOTAL IMMUNITY FROM TORT LIABILITY (SEP 2000)

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the

cost and expense of which may be reimbursable to the contractor under this contract, the Contractor will immediately notify the contracting officer and promptly furnish copies of all pertinent papers received by the contractor. The Contractor will, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

[65 FR 54440, Sept. 8, 2000]

1852.231–70 Precontract costs.

As prescribed in 1831.205–70, insert the following clause:

PRECONTRACT COSTS (JUN 1995)

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

(End of clause)

[60 FR 29505, June 5, 1995]

1852.231–71 Determination of compensation reasonableness.

As prescribed at 1831.205–671, insert the following provision.

DETERMINATION OF COMPENSATION REASONABLENESS (MAR 1994)

(a) The proposal shall include a total compensation plan. This plan shall address all proposed labor categories, including those personnel subject to union agreements, the Service Contract Act, and those exempt from both of the above. The total compensation plan shall include the salaries/wages, fringe benefits and leave programs proposed for each of these categories of labor. The plan also shall include a discussion of the consistency of the plan among the categories of labor being proposed. Differences between benefits offered professional and non-professional employees shall be highlighted. The requirements of this plan may be combined with that required by the clause at FAR 52.222–46, ''Evaluation of Compensation for Professional Employees.''

(b) The offeror shall provide written support to demonstrate that its proposed compensation is reasonable.

(c) The offeror shall include the rationale for any conformance procedures used or those Service Contract Act employees proposed that do not fail within the scope of any classification listed in the applicable wage determination.

(d) The offeror shall require all service subcontractors (1) with proposed cost reimbursement or non-competitive fixed-price type subcontracts having a total potential value in excess of $500,000 and (2) the cumulative value of all their service subcontracts under the proposed prime contract in excess of 10 percent of the prime contract's total potential value, provide as part of their proposals the information identified in (a) through (c) of this provision.

(End of provision)

[62 FR 4474, Jan. 30, 1997]

1852.232–70 NASA modification of FAR 52.232–12.

As prescribed at 1832.412–70, make the following modifications:

NASA MODIFICATION OF FAR 52.232–12, (MAR 1998)

(a) Basic Clause. (1) In paragraph (e), Maximum Payment, in the sentence that begins ''When the sum of,'' change the word ''When'' to lower case and insert before it: ''Unliquidated advance payments shall not exceed $____ at any time outstanding. In addition. * * *.''

(2) In paragraph (m)(1), delete ''in the form prescribed by the administering office'' and substitute ''and Standard Form 272, Federal Cash Transactions Report, and, if appropriate, Standard Form 272–A, Federal Cash Transactions Report Continuation.''

(b) Alternate II (if incorporated in the contract). In paragraph (e), Maximum Payment, in the sentence that begins ''When the sum of,'' change the word ''When'' to lower case and insert before it: ''Unliquidated advance payments shall not exceed $____ at any time outstanding. In addition. * * *.''

(c) Alternate V (if incorporated in the contract). (1) Substitute the following for paragraph (b): ''(b) Use of funds. The Contractor may use advance payment funds only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, indirect costs, or such other costs approved in writing by the administering contracting office. Payments are subject to any restrictions in other clauses of this contract. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of part 31 of the Federal Acquisition Regulation, other applicable regulations referenced in part 31, or subpart 1831.2.''

(2) In paragraph (d), Maximum Payment, in the sentence that begins ''When the sum of,'' change the word ''When'' to lower case and

insert before it: ''Unliquidated advance payments shall not exceed $____ at any time outstanding. In addition. * * *.''

(3) In paragraph (j)(1), insert between ''statements,'' and ''and'' ''together with Standard Form 272, Federal Cash Transactions Report, and, if appropriate, Standard Form 272–A, Federal Cash Transactions Report Continuation''

(4) If this is a Phase I contract awarded under the SBIR or STTR programs, delete paragraph (a) and substitute the following: ''(a) Requirements for payment. Advance payments will be made under this contract upon receipt of invoices from the Contractor. Invoices should be clearly marked ''Small Business Innovation Research Contract'' or ''Small Business Technology Transfer Contract,'' as appropriate, to expedite payment processing. One-third of the total contract price will be available to be advanced to the contractor immediately after award, another one-third will be advanced three months after award, and the final one-third will be paid upon acceptance by NASA of the Contractor's final report. By law, full payment must be made no later than 12 months after the date that contract requirements are completed. The Contractor shall flow down the terms of this clause to any subcontractor requiring advance payments.''

(End of clause)

[63 FR 14040, Mar. 24, 1998]

1852.232–77 Limitation of funds (fixed-price contract).

As prescribed in 1832.705–270(a), insert the following clause. Contracting officers are authorized, in appropriate cases, to revise clause paragraphs (a), (b), and (g) to specify the work required under the contract, in lieu of using contract item numbers. The 60-day period may be varied from 30 to 90 days, and the 75 percent from 75 to 85 percent:

LIMITATION OF FUNDS (FIXED-PRICE CONTRACT) (MAR 1989)

(a) Of the total price of items ____ through ____, the sum of $____ is presently available for payment and allotted to this contract. It is anticipated that from time to time additional funds will be allocated to the contract in accordance with the following schedule, until the total price of said items is allotted:

SCHEDULE FOR ALLOTMENT OF FUNDS

Date Amounts

(b) The Contractor agrees to perform or have performed work on the items specified in paragraph (a) of this clause up to the point at which, if this contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time allotted to the contract. The Contractor is not obligated to continue performance of the work beyond that point. The Government is not obligated in any event to pay or reimburse the Contractor more than the amount from time to time allotted to the contract, anything to the contrary in the Termination for Convenience of the Government clause notwithstanding.

(c) (1) It is contemplated that funds presently allotted to this contract will cover the work to be performed until ____.

(2) If funds allotted are considered by the Contractor to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Contractor shall notify the Contracting Officer in writing when within the next 60 days the work will reach a point at which, if the contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause will approximate 75 percent of the total amount then allotted to the contract.

(3) (i) The notice shall state the estimated date when the point referred to in paragraph (c)(2) of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it.

(ii) The Contractor shall, 60 days in advance of the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it, advise the Contracting Officer in writing as to the estimated amount of additional funds required for the timely performance of the contract for a further period as may be specified in the contract or otherwise agreed to by the parties.

(4) If, after the notification referred to in paragraph (c)(3)(ii) of this clause, additional funds are not allotted by the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it, the Contracting Officer shall, upon the Contractor's written request, terminate this contract on that date or on the date set forth in the request, whichever is later, pursuant to the Termination for Convenience of the Government clause.

(d) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties

shall agree on the applicable period of contract performance to be covered by these funds. The provisions of paragraphs (b) and (c) of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the contract shall be modified accordingly.

(e) If, solely by reason of the Government's failure to allot additional funds in amounts sufficient for the timely performance of this contract, the Contractor incurs additional costs or is delayed in the performance of the work under this contract, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items to be delivered, or in the time of delivery, or both.

(f) The Government may at any time before termination, and, with the consent of the Contractor, after notice of termination, allot additional funds for this contract.

(g) The provisions of this clause with respect to termination shall in no way be deemed to limit the rights of the Government under the default clause of this contract. The provisions of this Limitation of Funds clause are limited to the work on and allotment of funds for the items set forth in paragraph (a). This clause shall become inoperative upon the allotment of funds for the total price of said work except for rights and obligations then existing under this clause.

(h) Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the Termination for Convenience of the Government clause of this contract.

(End of clause)

1852.232–79 Payment for on-site preparatory costs.

As prescribed in 1832.111–70, insert the following clause:

PAYMENT FOR ON-SITE PREPARATORY COSTS (SEP 1987)

Costs associated with on-site preparatory work (start-up or set-up costs) will be prorated over all work activities of a Critical Path Method (CPM) network or Progress Chart against which progress payments will be sought. Separate payment for on-site preparatory costs will not be made by the Government.

(End of clause)

1852.232–81 Contract funding.

As prescribed in 1832.705–270(b), insert the following clause:

CONTRACT FUNDING (JUN 1990)

(a) For purposes of payment of cost, exclusive of fee, in accordance with the Limitation of Funds clause, the total amount allotted by the Government to this contract is $_____. This allotment is for [Insert applicable item number(s), task(s), or work description] _____ and covers the following estimated period of performance: _____.

(b) An additional amount of $_____ is obligated under this contract for payment of fee.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990; 57 FR 40856, Sept. 8, 1992]

1852.232–82 Submission of requests for progress payments.

As prescribed in 1832.502–470, insert the following clause:

SUBMISSION OF REQUESTS FOR PROGRESS PAYMENTS (MAR 1989)

The Contractor shall request progress payments in accordance with the Progress Payments clause by submitting to the Contracting Officer an original and two copies of Standard Form (SF) 1443, Contractor's Request for Progress Payment, and the contractor's invoice (if applicable). The Contracting Officer's office is the designated billing office for progress payments for purposes of the Prompt Payment clause.

(End of clause)

1852.233–70 Protests to NASA.

As prescribed in 1833.106–70, insert the following provision:

PROTESTS TO NASA (OCT 2002)

Potential bidders or offerors may submit a protest under 48 CFR part 33 (FAR part 33) directly to the Contracting Officer. As an alternative to the Contracting Officer's consideration of a protest, a potential bidder or offeror may submit the protest to the Assistant Administrator for Procurement, who will serve as or designate the official responsible for conducting an independent review. Protests requesting an independent review shall be addressed to Assistant Administrator for Procurement, NASA Code H, Washington, DC 20546–0001.

[62 FR 11108, Mar. 11, 1997, as amended at 67 FR 61519, Oct. 1, 2002]

1852.234–1 Notice of Earned Value Management System.

As prescribed in 1834.203–70(a), insert the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM (NOV 2006)

(a) The offeror shall provide documentation that its proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in the American National Standards Institute (ANSI)/Electronic Industries Alliance (EIA)–748 Standard, Earned Value Management Systems.

(b) If the offeror proposes to use a system that currently does not meet the requirements of paragraph (a) of this provision, the offeror shall submit its comprehensive plan for compliance with the EVMS guidelines to the Government for approval.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contract;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the EVMS guidelines in ANSI/EIA–748;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for application of the EVMS requirements to subcontractors;

(v) Describe how the offeror will ensure EVMS compliance for each subcontractor subject to the flowdown requirement in paragraph (c) whose EVMS has not been recognized by the Cognizant Federal Agency as compliant according to paragraph (a);

(vi) Provide documentation describing the process and results, including Government participation, of any third-party or self-evaluation of the system's compliance with the EVMS guidelines; and

(vii) If the value of the offeror's proposal, including options, is $50 million or more, provide a schedule of events leading up to formal validation and Government acceptance of the Contractor's EVMS. This schedule should include progress assistance visits, the first visit occurring no later than 30 days after contract award, and a compliance review as soon as practicable. The Department of Defense Earned Value Management Implementation Guide (*https://acc.dau.mil/CommunityBrowser.aspx?id=19557*) outlines the requirements for conducting a progress assistance visit and validation compliance review.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review the offeror's EVMS implementation plan prior to contract award.

(c) The offeror shall identify in its offer the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the EVMS requirement. Prior to contract award, the offeror and NASA shall agree on the subcontractors, or subcontracted effort, subject to the EVMS requirement.

(d) The offeror shall incorporate its compliance evaluation factors for subcontractors into the plan required by paragraph (b) of this provision.

(End of provision)

[71 FR 66121, Nov. 13, 2006]

1852.234–2 Earned Value Management System.

As prescribed in 1834.203–70(b) insert the following clause:

EARNED VALUE MANAGEMENT SYSTEM (NOV 2006)

(a) In the performance of this contract, the Contractor shall use—

(1) An Earned Value Management System (EVMS) that has been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines specified in the American National Standards Institute (ANSI)/Electronic Industries Alliance (EIA)—748 Standard, Industry Guidelines for Earned Value Management Systems (current version at the time of award) to manage this contract; and

(2) Earned Value Management procedures that provide for generation of timely, accurate, reliable, and traceable information for the Contract Performance Report (CPR) required by the contract.

(b) If, at the time of award, the Contractor's EVMS has not been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines, or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in the ANSI/EIA–748 Standard (current version at the time of award), the Contractor shall apply the system to the contract and shall take timely action to implement its plan to obtain compliance/validation. The Contractor shall follow and implement the approved compliance/validation plan in a timely fashion. The Government will conduct a Compliance Review to assess the contactor's compliance with its plan, and if the Contractor does not follow the approved implementation schedule or correct all resulting system deficiencies identified as a result of the compliance review within a reasonable time, the Contracting Officer may take remedial action, that may include, but is not limited to, a reduction in fee.

(c) The Government will conduct Integrated Baseline Reviews (IBRs). Such reviews shall be scheduled and conducted as early as practicable, and if a pre-award IBR has not been conducted, a post-award IBR should be conducted within 180 calendar days after contract award, or the exercise of significant contract options, or within 60 calendar days after distribution of a supplemental agreement that implements a significant funding realignment or effects a significant change in contractual requirements (e.g., incorporation of major modifications). The objective of IBRs is for the Government and the Contractor to jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(d) Unless a waiver is granted by the Cognizant Federal Agency, Contractor proposed EVMS changes require approval of the Cognizant Federal Agency prior to implementation. The Cognizant Federal Agency shall 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 Cognizant Federal Agency, the Contractor shall disclose EVMS changes to the Cognizant Federal Agency at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative. Access is to permit Government surveillance to ensure that the Contractor's EVMS complies, and continues to comply, with the EVMS guidelines referenced in paragraph (a) of this clause, and to demonstrate—

(1) Proper implementation of the procedures generating the cost and schedule information being used to satisfy the contract data requirements;

(2) Continuing application of the accepted company procedures in satisfying the CPR required by the contract through recurring program/project and contract surveillance; and

(3) Implementation of any corrective actions identified during the surveillance process.

(f) The Contractor shall be responsible for ensuring that its subcontractors, identified below, comply with the EVMS requirements of this clause as follows:

(1) For subcontracts with an estimated dollar value of $50M or more, the following subcontractors shall comply with the requirements of this clause.

(Contracting Officer to insert names of subcontractors or subcontracted effort).

_____

_____

(2) For subcontracts with an estimated dollar value of less than $50M, the following subcontractors shall comply with the requirements of this clause except for the requirement in paragraph (b), if applicable, to obtain compliance/validation.

(Contracting Officer to insert names of subcontractors or subcontracted effort.)

_____

_____

_____

_____

(g) If the contractor identifies a need to deviate from the agreed baseline by working against an Over Target Baseline (OTB) or Over Target Schedule (OTS), the contractor shall submit to the Contracting Officer a request for approval to begin implementation of an OTB or OTS. This request shall include a top-level projection of cost and/or schedule growth, whether or not performance variances will be retained, and a schedule of implementation for the reprogramming adjustment. The Government will approve or deny the request within 30 calendar days after receipt of the request. Failure of the Government to respond within this 30-day period constitutes approval of the request. Approval of the deviation request does not constitute a change, or the basis for a change, to the negotiated cost or price of this contract, or the estimated cost of any undefinitized contract actions.

(End of clause)

Alterate I (NOV 2006). As prescribed in 1834.203–70(b), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) If, at the time of award, the Contractor's EVMS has not been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines, or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in the ANSI/EIA–748 Standard (current version at the time of ward), the Contractor shall apply the system to the contract and shall take timely action to implement its plan to be compliant with the guidelines. The Government will not formally validate/accept the Contractor's EVMS with respect to this contract. The use of the Contractor's EVMS for this contract does not imply Government acceptance of the Contractor's EVMS for application to future contracts. The Government will monitor compliance through routine surveillance.

[71 FR 66121, Nov. 13, 2006]

1852.235–70 Center for AeroSpace Information.

As prescribed in 1835.070(a), insert the following clause:

CENTER FOR AEROSPACE INFORMATION (DEC 2006)

(a) The Contractor should register with and avail itself of the services provided by the NASA Center for AeroSpace Information (CASI) (*http://www.sti.nasa.gov*) for the conduct of research or research and development required under this contract. CASI provides a variety of services and products as a NASA repository and database of research information, which may enhance contract performance.

(b) Should the CASI information or service requested by the Contractor be unavailable or not in the exact form necessary by the Contractor, neither CASI nor NASA is obligated to search for or change the format of the information. A failure to furnish information shall not entitle the Contractor to an equitable adjustment under the terms and conditions of this contract.

(c) Information regarding CASI and the services available can be obtained at the Internet address contained in paragraph (a) of this clause.

(End of clause)

[68 FR 5232, Feb. 3, 2003, as amended at 71 FR 71073, Dec. 8, 2006]

1852.235–71 Key personnel and facilities.

As prescribed in 1835.070(b), insert the following clause:

KEY PERSONNEL AND FACILITIES (MAR 1989)

(a) The personnel and/or facilities listed below (or specified in the contract Schedule) are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel or facilities, the Contractor shall (1) notify the Contracting Officer reasonably in advance and (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract.

(b) The Contractor shall make no diversion without the Contracting Officer's written consent; *provided*, that the Contracting Officer may ratify in writing the proposed change, and that ratification shall constitute the Contracting Officer's consent required by this clause.

(c) The list of personnel and/or facilities (shown below or as specified in the contract Schedule) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel and/or facilities.

[List here the personnel and/or facilities considered essential, unless they are specified in the contract Schedule.]

(End of clause)

1852.235–72 Instructions for responding to NASA Research Announcements.

As prescribed in 1835.070(c), insert the following provision:

INSTRUCTIONS FOR RESPONDING TO NASA RESEARCH ANNOUNCEMENTS (DEC 2005)

(a) *General*. (1) Proposals received in response to a NASA Research Announcement (NRA) will be used only for evaluation purposes. NASA does not allow a proposal, the contents of which are not available without restriction from another source, or any unique ideas submitted in response to an NRA to be used as the basis of a solicitation or in negotiation with other organizations, nor is a pre-award synopsis published for individual proposals.

(2) A solicited proposal that results in a NASA award becomes part of the record of that transaction and may be available to the public on specific request; however, information or material that NASA and the awardee mutually agree to be of a privileged nature will be held in confidence to the extent permitted by law, including the Freedom of Information Act.

(3) NRAs contain programmatic information and certain requirements which apply only to proposals prepared in response to that particular announcement. These instructions contain the general proposal preparation information which applies to responses to all NRAs.

(4) A contract, grant, cooperative agreement, or other agreement may be used to accomplish an effort funded in response to an NRA. NASA will determine the appropriate award instrument. Contracts resulting from NRAs are subject to the Federal Acquisition Regulation and the NASA FAR Supplement. Any proposal from a large business concern that may result in the award of a contract, which exceeds $5,000,000 and has subcontracting possibilities should include a small business subcontracting plan in accordance with the clause at FAR 52.219–9, Small Business Subcontracting Plan. (Subcontract plans for contract awards below $5,000,000, will be negotiated after selection.) Any resultant grants or cooperative agreements will be awarded and administered in accordance with the NASA Grant and Cooperative Agreement Handbook (NPR 5800.1).

(5) NASA does not have mandatory forms or formats for responses to NRAs; however, it is requested that proposals conform to the

guidelines in these instructions. NASA may accept proposals without discussion; hence, proposals should initially be as complete as possible and be submitted on the proposers' most favorable terms.

(6) To be considered for award, a submission must, at a minimum, present a specific project within the areas delineated by the NRA; contain sufficient technical and cost information to permit a meaningful evaluation; be signed by an official authorized to legally bind the submitting organization; not merely offer to perform standard services or to just provide computer facilities or services; and not significantly duplicate a more specific current or pending NASA solicitation.

(b) NRA-Specific Items. Several proposal submission items appear in the NRA itself: the unique NRA identifier; when to submit proposals; where to send proposals; number of copies required; and sources for more information. Items included in these instructions may be supplemented by the NRA.

(c) The following information is needed to permit consideration in an objective manner. NRAs will generally specify topics for which additional information or greater detail is desirable. Each proposal copy shall contain all submitted material, including a copy of the transmittal letter if it contains substantive information.

(1) *Transmittal letter or prefatory material.*

(i) The legal name and address of the organization and specific division or campus identification if part of a larger organization;

(ii) A brief, scientifically valid project title intelligible to a scientifically literate reader and suitable for use in the public press;

(iii) Type of organization: e.g., profit, nonprofit, educational, small business, minority, women-owned, etc;

(iv) Name and telephone number of the principal investigator and business personnel who may be contacted during evaluation or negotiation;

(v) Identification of other organizations that are currently evaluating a proposal for the same efforts;

(vi) Identification of the NRA, by number and title, to which the proposal is responding;

(vii) Dollar amount requested, desired starting date, and duration of project;

(viii) Date of submission; and

(ix) Signature of a responsible official or authorized representative of the organization, or any other person authorized to legally bind the organization (unless the signature appears on the proposal itself).

(2) *Restriction on use and disclosure of roposal information.* Information contained in proposals is used for evaluation purposes only. Offerors or quoters should, in order to maximize protection of trade secrets or other information that is confidential or privileged, place the following notice on the title page of the proposal and specify the information subject to the notice by inserting an appropriate identification in the notice. In any event, information contained in proposals will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

NOTICE—RESTRICTION ON USE AND DISCLOSURE OF PROPOSAL INFORMATION

The information (data) contained in [*insert page numbers or other identification]* of this proposal constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed other than for evaluation purposes; provided, however, that in the event a contract (or other agreement) is awarded on the basis of this proposal the Government shall have the right to use and disclose this information (data) to the extent provided in the contract (or other agreement). This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

(3) *Abstract.* Include a concise (200–300 word if not otherwise specified in the NRA) abstract describing the objective and the method of approach.

(4) *Project description.* (i) The main body of the proposal shall be a detailed statement of the work to be undertaken and should include objectives and expected significance; relation to the present state of knowledge; and relation to previous work done on the project and to related work in progress elsewhere. The statement should outline the plan of work, including the broad design of experiments to be undertaken and a description of experimental methods and procedures. The project description should address the evaluation factors in these instructions and any specific factors in the NRA. Any substantial collaboration with individuals not referred to in the budget or use of consultants should be described. Subcontracting significant portions of a research project is discouraged.

(ii) When it is expected that the effort will require more than one year, the proposal should cover the complete project to the extent that it can be reasonably anticipated. Principal emphasis should be on the first year of work, and the description should distinguish clearly between the first year's work and work planned for subsequent years.

(5) *Management approach.* For large or complex efforts involving interactions among numerous individuals or other organizations, plans for distribution of responsibilities and arrangements for ensuring a coordinated effort should be described.

(6) *Personnel.* The principal investigator is responsible for supervision of the work and participates in the conduct of the research regardless of whether or not compensated under the award. A short biographical sketch of the principal investigator, a list of principal publications and any exceptional qualifications should be included. Omit social security number and other personal items which do not merit consideration in evaluation of the proposal. Give similar biographical information on other senior professional personnel who will be directly associated with the project. Give the names and titles of any other scientists and technical personnel associated substantially with the project in an advisory capacity. Universities should list the approximate number of students or other assistants, together with information as to their level of academic attainment. Any special industry-university cooperative arrangements should be described.

(7) *Facilities and equipment.* (i) Describe available facilities and major items of equipment especially adapted or suited to the proposed project, and any additional major equipment that will be required. Identify any Government-owned facilities, industrial plant equipment, or special tooling that are proposed for use. Include evidence of its availability and the cognizant Government points of contact.

(ii) Before requesting a major item of capital equipment, the proposer should determine if sharing or loan of equipment already within the organization is a feasible alternative. Where such arrangements cannot be made, the proposal should so state. The need for items that typically can be used for research and non-research purposes should be explained.

(8) *Proposed costs (U.S. proposals only).* (i) Proposals should contain cost and technical parts in one volume: do not use separate ''confidential'' salary pages. As applicable, include separate cost estimates for salaries and wages; fringe benefits; equipment; expendable materials and supplies; services; domestic and foreign travel; ADP expenses; publication or page charges; consultants; subcontracts; other miscellaneous identifiable direct costs; and indirect costs. List salaries and wages in appropriate organizational categories (e.g., principal investigator, other scientific and engineering professionals, graduate students, research assistants, and technicians and other non-professional personnel). Estimate all staffing data in terms of staff-months or fractions of full-time.

(ii) Explanatory notes should accompany the cost proposal to provide identification and estimated cost of major capital equipment items to be acquired; purpose and estimated number and lengths of trips planned; basis for indirect cost computation (including date of most recent negotiation and cognizant agency); and clarification of other items in the cost proposal that are not self-evident. List estimated expenses as yearly requirements by major work phases.

(iii) Allowable costs are governed by FAR part 31 and the NASA FAR Supplement Part 1831 (and OMB Circulars A–21 for educational institutions and A–122 for nonprofit organizations).

(iv) Use of NASA funds—NASA funding may not be used for foreign research efforts at any level, whether as a collaborator or a subcontract. The direct purchase of supplies and/or services, which do not constitute research, from non-U.S. sources by U.S award recipients is permitted. Additionally, in accordance with the National Space Transportation Policy, use of a non-U.S. manufactured launch vehicle is permitted only on a no-exchange-of-funds basis.

(9) *Security.* Proposals should not contain security classified material. If the research requires access to or may generate security classified information, the submitter will be required to comply with Government security regulations.

(10) *Current support.* For other current projects being conducted by the principal investigator, provide title of project, sponsoring agency, and ending date.

(11) *Special matters.* (i) Include any required statements of environmental impact of the research, human subject or animal care provisions, conflict of interest, or on such other topics as may be required by the nature of the effort and current statutes, executive orders, or other current Government-wide guidelines.

(ii) Identify and discuss risk factors and issues throughout the proposal where they are relevant, and your approach to managing these risks.

(iii) Proposers should include a brief description of the organization, its facilities, and previous work experience in the field of the proposal. Identify the cognizant Government audit agency, inspection agency, and administrative contracting officer, when applicable.

(d) *Renewal proposals.* (1) Renewal proposals for existing awards will be considered in the same manner as proposals for new endeavors. A renewal proposal should not repeat all of the information that was in the original proposal. The renewal proposal should refer to its predecessor, update the parts that are no longer current, and indicate what elements of the research are expected to be covered during the period for which support is desired. A description of any significant findings since the most recent progress report should be included. The renewal proposal should treat, in reasonable detail, the plans for the next period, contain a cost estimate, and otherwise adhere to these instructions.

(2) NASA may renew an effort either through amendment of an existing contract or by a new award.

(e) *Length*. Unless otherwise specified in the NRA, effort should be made to keep proposals as brief as possible, concentrating on substantive material. Few proposals need exceed 15–20 pages. Necessary detailed information, such as reprints, should be included as attachments. A complete set of attachments is necessary for each copy of the proposal. As proposals are not returned, avoid use of ''one-of-a-kind'' attachments.

(f) *Joint proposals*. (1) Where multiple organizations are involved, the proposal may be submitted by only one of them. It should clearly describe the role to be played by the other organizations and indicate the legal and managerial arrangements contemplated. In other instances, simultaneous submission of related proposals from each organization might be appropriate, in which case parallel awards would be made.

(2) Where a project of a cooperative nature with NASA is contemplated, describe the contributions expected from any participating NASA investigator and agency facilities or equipment which may be required. The proposal must be confined only to that which the proposing organization can commit itself. ''Joint'' proposals which specify the internal arrangements NASA will actually make are not acceptable as a means of establishing an agency commitment.

(g) *Late proposals*. Proposals or proposal modifications received after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received.

(h) *Withdrawal*. Proposals may be withdrawn by the proposer at any time before award. Offerors are requested to notify NASA if the proposal is funded by another organization or of other changed circumstances which dictate termination of evaluation.

(i) *Evaluation factors*. (1) Unless otherwise specified in the NRA, the principal elements (of approximately equal weight) considered in evaluating a proposal are its relevance to NASA's objectives, intrinsic merit, and cost.

(2) Evaluation of a proposal's relevance to NASA's objectives includes the consideration of the potential contribution of the effort to NASA's mission.

(3) Evaluation of its intrinsic merit includes the consideration of the following factors of equal importance:

(i) Overall scientific or technical merit of the proposal or unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(ii) Offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(iii) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical in achieving the proposal objectives.

(iv) Overall standing among similar proposals and/or evaluation against the state-of-the-art.

(4) Evaluation of the cost of a proposed effort may include the realism and reasonableness of the proposed cost and available funds.

(j) *Evaluation techniques*. Selection decisions will be made following peer and/or scientific review of the proposals. Several evaluation techniques are regularly used within NASA. In all cases proposals are subject to scientific review by discipline specialists in the area of the proposal. Some proposals are reviewed entirely in-house, others are evaluated by a combination of in-house and selected external reviewers, while yet others are subject to the full external peer review technique (with due regard for conflict-of-interest and protection of proposal information), such as by mail or through assembled panels. The final decisions are made by a NASA selecting official. A proposal which is scientifically and programmatically meritorious, but not selected for award during its initial review, may be included in subsequent reviews unless the proposer requests otherwise.

(k) *Selection for award*. (1) When a proposal is not selected for award, the proposer will be notified. NASA will explain generally why the proposal was not selected. Proposers desiring additional information may contact the selecting official who will arrange a debriefing.

(2) When a proposal is selected for award, negotiation and award will be handled by the procurement office in the funding installation. The proposal is used as the basis for negotiation. The contracting officer may request certain business data and may forward a model award instrument and other information pertinent to negotiation.

(l) *Additional guidelines applicable to foreign proposals and proposals including foreign participation*. (1) NASA welcomes proposals from outside the U.S. However, foreign entities are generally not eligible for funding from NASA. Therefore, unless otherwise noted in the NRA, proposals from foreign entities should not include a cost plan unless the proposal involves collaboration with a U.S. institution, in which case a cost plan for only the participation of the U.S. entity must be included. Proposals from foreign entities and proposals from U.S. entities that include foreign participation must be endorsed by the respective government agency or funding/sponsoring institution in the country from which the foreign entity is proposing. Such endorsement should indicate that the proposal merits careful consideration by NASA,

and if the proposal is selected, sufficient funds will be made available to undertake the activity as proposed.

(2) All foreign proposals must be typewritten in English and comply with all other submission requirements stated in the NRA. All foreign proposals will undergo the same evaluation and selection process as those originating in the U.S. All proposals must be received before the established closing date. Those received after the closing date will be treated in accordance with paragraph (g) of this provision. Sponsoring foreign government agencies or funding institutions may, in exceptional situations, forward a proposal without endorsement if endorsement is not possible before the announced closing date. In such cases, the NASA sponsoring office should be advised when a decision on endorsement can be expected.

(3) Successful and unsuccessful foreign entities will be contacted directly by the NASA sponsoring office. Copies of these letters will be sent to the foreign sponsor. Should a foreign proposal or a U.S. proposal with foreign participation be selected, NASA's Office of External Relations will arrange with the foreign sponsor for the proposed participation on a no-exchange-of-funds basis, in which NASA and the non-U.S. sponsoring agency or funding institution will each bear the cost of discharging their respective responsibilities.

(4) Depending on the nature and extent of the proposed cooperation, these arrangements may entail:

(i) An exchange of letters between NASA and the foreign sponsor; or

(ii) A formal Agency-to-Agency Memorandum of Understanding (MOU).

(m) *Cancellation of NRA.* NASA reserves the right to make no awards under this NRA and to cancel this NRA. NASA assumes no liability for canceling the NRA or for anyone's failure to receive actual notice of cancellation.

[62 FR 4475, Jan. 30, 1997, as amended at 64 FR 48561, Sept. 7, 1999; 65 FR 3153, Jan. 20, 2000; 67 FR 30604, May 7, 2002; 67 FR 61520, Oct. 1, 2002; 69 FR 63460, Nov. 2, 2004; 70 FR 74207, Dec. 15, 2005]

1852.235–73 Final Scientific and Technical Reports.

As prescribed in 1835.070(d) insert the following clause:

FINAL SCIENTIFIC AND TECHNICAL REPORTS (DEC 2006)

(a) The Contractor shall submit to the Contracting Officer a final report that summarizes the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report should include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract.

(b) The final report shall be of a quality suitable for publication and shall follow the formatting and stylistic guidelines contained in NPR 2200.2, Guidelines for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information. Electronic formats for submission of reports should be used to the maximum extent practical. Before electronically submitting reports containing scientific and technical information (STI) that is export-controlled or limited or restricted, contact the Contracting Officer to determine the requirements to electronically transmit these forms of STI. If appropriate electronic safeguards are not available at the time of submission, a paper copy or a CD-ROM of the report shall be required. Information regarding appropriate electronic formats for final reports is available at *http://www.sti.nasa.gov* under ''Publish STI—Electronic File Formats.''

(c) The last page of the final report shall be a completed Standard Form (SF) 298, Report Documentation Page.

(d) In addition to the final report submitted to the Contracting Officer, the Contractor shall concurrently provide to the Center STI/Publication Manager and the NASA Center for AeroSpace Information (CASI) a copy of the letter transmitting the final report to the Contracting Officer. The copy of the letter shall be submitted to CASI at the address listed at *http://www.sti.nasa.gov* under the ''Get Help'' link.

(e) In accordance with paragraph (d) of the Rights in Data—General clause (52.227–14) of this contract, the Contractor may publish, or otherwise disseminate, data produced during the reports required by 1852.235–74 when included in the contract, without prior review by NASA. The Contractor is responsible for reviewing publication or dissemination of the data for conformance with laws and regulations governing its distribution, including intellectual property rights, export control, national security and other requirements, and to the extent the contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for complying with such restrictive markings. Should the Contractor seek to publish or otherwise disseminate the final report, or any additional reports required by 1852.235–74 if applicable, as delivered to NASA under this contract, the Contractor may do so once NASA has completed its document availability authorization review, and availability of the report has been determined.

Alternate I (FEB 2003) As prescribed by 1835.070(d)(1), insert the following as paragraph (e) of the basic clause:

(e) The data resulting from this research activity is ''fundamental research'' which will be broadly shared within the scientific community. No foreign national access or dissemination restrictions apply to this research activity. The Contractor may publish, release, or otherwise disseminate data produced during the performance of this contract, including the final report, without prior review by NASA for export control or national security purposes. However, NASA retains the right to review the final report to ensure that proprietary information, which may have been provided to the Contractor, is not released without authorization and for consistency with NASA publication standards. Additionally, the Contractor is responsible for reviewing any publication, release, or dissemination of the data for conformance with other restrictions expressly set forth in this contract, and to the extent it receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for compliance with such restrictive markings.

Alternate II (DEC 2005) As prescribed by 1835.070(d)(2), insert the following as paragraph (e) of the basic clause:

(e) Data resulting from this research activity may be subject to export control, national security restrictions or other restrictions designated by NASA; or, to the extent the Contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, may include proprietary information of others. Therefore, the Contractor shall not publish, release, or otherwise disseminate, except to NASA, data produced during the performance of this contract, including data contained in the final report and any additional reports required by 1852.235–74 when included in the contract, without prior review by NASA. Should the Contractor seek to publish, release, or otherwise disseminate data produced during the performance of this contract, the Contractor may do so once NASA has completed its document availability authorization review and the availability of the data has been determined.

(f) All publications of any material based on or developed under NASA sponsored projects shall include an acknowledgement similar to the following:

''The material is based upon work supported by the National Aeronautics and Space Administration under Contract Number XXXX.''

Except for articles or papers published in scientific, technical or professional journals, the exposition of results from NASA supported research shall also include the following disclaimer:

''Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Aeronautics and Space Administration.''

Alternate III (JAN 2005) As prescribed by 1835.070(d)(3), insert the following as paragraph (e) of the basic clause:

(e) The Contractor's rights in data are defined in FAR 52.227–20, Rights In Data—SBIR Program. The Contractor may publish, or otherwise disseminate, such data without prior review by NASA. The Contractor is responsible for reviewing publication or dissemination of the data for conformance with laws and regulations governing its distribution, including intellectual property rights, export control, national security and other requirements, and to the extent the Contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for complying with such restrictive markings. In the event the Contractor has established its claim to copyright data produced under this contract and has affixed a copyright notice and acknowledgement of Government sponsorship, or has affixed the SBIR Rights Notice contained in paragraph (d) of FAR 52.227–20, the Government shall comply with such Notices.

(End of clause)

[68 FR 5232, Feb. 3, 2003, as amended at 70 FR 2022, Jan. 12, 2005; 70 FR 74207, Dec. 15, 2005; 71 FR 71073, Dec. 8, 2006]

1852.235–74 Additional Reports of Work—Research and Development.

As prescribed in 1835.070(e), insert a clause substantially the same as the following:

ADDITIONAL REPORTS OF WORK—RESEARCH AND DEVELOPMENT (FEB 2003)

In addition to the final report required under this contract, the Contractor shall submit the following report(s) to the Contracting Officer:

(a) *Monthly progress reports.* The Contractor shall submit separate monthly reports of all work accomplished during each month of contract performance. Reports shall be in narrative form, brief, and informal. They shall include a quantitative description of progress, an indication of any current problems that may impede performance, proposed corrective action, and a discussion of the work to be performed during the next monthly reporting period.

(b) *Quarterly progress reports.* The Contractor shall submit separate quarterly reports of all work accomplished during each

three-month period of contract performance. In addition to factual data, these reports should include a separate analysis section interpreting the results obtained, recommending further action, and relating occurrences to the ultimate objectives of the contract. Sufficient diagrams, sketches, curves, photographs, and drawings should be included to convey the intended meaning.

(c) *Submission dates.* Monthly and quarterly reports shall be submitted by the 15th day of the month following the month or quarter being reported. If the contract is awarded beyond the middle of a month, the first monthly report shall cover the period from award until the end of the following month. No monthly report need be submitted for the third month of contract effort for which a quarterly report is required. No quarterly report need be submitted for the final three months of contract effort since that period will be covered in the final report. The final report shall be submitted within ____ days after the completion of the effort under the contract.

(End of clause)

[68 FR 5232, Feb. 3, 2003]

1852.236–71 Additive or deductive items.

As prescribed in 1836.570(a), insert the following provision:

ADDITIVE OR DEDUCTIVE ITEMS (MAR 1989)

(a) The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in order of priority listed in the Schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed those funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added for each bid if award on it can be made within the funds.

(b) An example for one bid is an amount available of $100,000, a bidder's base bid of $85,000, and four successive additives of $10,000, $8,000, $6,000, and $4,000. In this example, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because either of them would cause the aggregate bid to exceed $100,000.

(c) All bids shall be evaluated on the basis of the same additive or deductive bid items. The listed order of priority must be followed only for determining the low bidder. After determination of the low bidder, award in the best interests of the Government may be made to that bidder on its base bid and any combination of its additive or deductive bid items for which funds are determined to be available at the time of the award, provided that award of the combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236–72 Bids with unit prices.

As prescribed in 1836.570(b), insert the following provision:

BIDS WITH UNIT PRICES (MAR 1989)

(a) All extensions of the unit prices bid will be subject to verification by the Government. If there is variation between the unit price and any extended amounts, the unit price will be considered to be the bid.

(b) If a modification to a bid based on unit prices that provides for a lump-sum adjustment to the total estimated cost is submitted, the application of the lump sum adjustment to each unit price in the bid must be stated. If it is not stated, the lump-sum adjustment shall be applied on a pro rata basis to every unit price in the bid.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236–73 Hurricane plan.

As prescribed in 1836.570(c), insert the following clause:

HURRICANE PLAN (DEC 1988)

In the event of a hurricane warning, the Contractor shall—

(a) Inspect the area and place all materials possible in a protected location;

(b) Tie down, or identify and store, all outside equipment and materials;

(c) Clear all surrounding areas and roofs of buildings, or tie down loose material, equipment, debris, and any other objects that could otherwise be blown away or blown against existing buildings; and

(d) Ensure that temporary erosion controls are adequate.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236–74 Magnitude of requirement.

As prescribed in 1836.570(d), insert the following provision:

MAGNITUDE OF REQUIREMENT (DEC 1988)

The Government estimated price range of this project is between $_____ and $_____. [Insert the estimated dollar range.]

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236–75 Partnering for construction contracts.

As prescribed in 1836.7004, insert the following clause:

PARTNERING FOR CONSTRUCTION CONTRACTS (AUG 1998)

(a) The terms ''partnering'' and ''partnership'' used herein shall mean a relationship of open communication and close cooperation that involves both Government and Contractor personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve contract objectives and resolve issues and implementing actions as required.

(b) Partnering will be a voluntary commitment mutually agreed upon by at least NASA and the prime contractor, and preferably the subcontractors and the A&E design contractor, if applicable. Sustained commitment to the process is essential to assure success of the relationship.

(c) NASA intends to facilitate contract management by encouraging the foundation of a cohesive partnership with the Contractor, its subcontractors, the A&E design contractor, and NASA's contract management staff. This partnership will be structured to draw on the strengths of each organization to identify and achieve mutual objectives. The objectives are intended to complete the contract requirements within budget, on schedule, and in accordance with the plans and specifications.

(d) To implement the partnership, it is anticipated that within 30 days of the Notice to Proceed the prime Contractor's key personnel, its subcontractors, the A&E design contractor, and NASA personnel will attend a partnership development and team building workshop. Follow-up team building workshops will be held periodically throughout the duration of the contract as agreed to by the Government and the Contractor.

(e) Any cost with effectuating the partnership will be agreed to in advance by both parties and will be shared with no change in the contract price. The contractor's share of the costs are not recoverable under any other Government award.

(End of clause)

[63 FR 44171, Aug. 18, 1998]

1852.237–70 Emergency evacuation procedures.

As prescribed at 1837.110–70(a), insert the following clause:

EMERGENCY EVACUATION PROCEDURES (DEC 1988)

The contractor shall assure that its personnel at Government facilities are familiar with the functions of the Government's emergency evacuation procedures. If requested by the Contracting Officer, the Contractor shall designate an individual or individuals as contact points to provide for efficient and rapid evacuation of the facility if and when required.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 54 FR 39376, Sept. 26, 1989; 62 FR 4476, Jan. 30, 1997]

1852.237–71 Pension portability.

As prescribed at 1837.110–70(b), insert the following clause:

PENSION PORTABILITY (JAN 1997)

(a) In order for pension costs attributable to employees assigned to this contract to be allowable costs under this contract, the plans covering such employees must:

(1) Comply with all applicable Government laws and regulations;

(2) Be a defined contribution plan, or a multiparty defined benefit plan operated under a collective bargaining agreement. In either case, the plan must be portable, i.e., the plan follows the employee, not the employer;

(3) Provide for 100 percent employee vesting at the earlier of one year of continuous employee service or contract termination; and

(4) Not be modified, terminated, or a new plan adopted without the prior written approval of the cognizant NASA Contracting Officer.

(b) The Contractor shall include paragraph (a) of this clause in subcontracts for continuing services under a service contract if:

(1) The prime contract requires pension portability;

(2) The subcontracted labor dollars (excluding any burdens or profit/fee) exceed $2,500,000 and ten percent of the total prime contract labor dollars (excluding any burdens or profit/fee); and

(3) Either of the following conditions exists:

(i) There is a continuing need for the same or similar subcontract services for a minimum of five years (inclusive of options), and if the subcontractor changes, a high percentage of the predecessor subcontractor's employees are expected to remain with the program; or

(ii) The employees under a predecessor subcontract were covered by a portable pension plan, a follow-on subcontract or a subcontract consolidating existing services is awarded, and the total subcontract period covered by the plan covers a minimum of five years (including both the predecessor and successor subcontracts).

(End of clause)

[62 FR 4477, Jan. 30, 1997]

1852.237–72 Access to Sensitive Information.

As prescribed in 1837.203–72(a), insert the following clause:

ACCESS TO SENSITIVE INFORMATION (JUN 2005)

(a) As used in this clause, ''sensitive information'' refers to information that a contractor has developed at private expense, or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, and which may embody trade secrets or commercial or financial information, and which may be sensitive or privileged.

(b) To assist NASA in accomplishing management activities and administrative functions, the Contractor shall provide the services specified elsewhere in this contract.

(c) If performing this contract entails access to sensitive information, as defined above, the Contractor agrees to—

(1) Utilize any sensitive information coming into its possession only for the purposes of performing the services specified in this contract, and not to improve its own competitive position in another procurement.

(2) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(3) Allow access to sensitive information only to those employees that need it to perform services under this contract.

(4) Preclude access and disclosure of sensitive information to persons and entities outside of the Contractor's organization.

(5) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in this contract and to safeguard it from unauthorized use and disclosure.

(6) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

(7) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(d) The Contractor will comply with all procedures and obligations specified in its Organizational Conflicts of Interest Avoidance Plan, which this contract incorporates as a compliance document.

(e) The nature of the work on this contract may subject the Contractor and its employees to a variety of laws and regulations relating to ethics, conflicts of interest, corruption, and other criminal or civil matters relating to the award and administration of government contracts. Recognizing that this contract establishes a high standard of accountability and trust, the Government will carefully review the Contractor's performance in relation to the mandates and restrictions found in these laws and regulations. Unauthorized uses or disclosures of sensitive information may result in termination of this contract for default, or in debarment of the Contractor for serious misconduct affecting present responsibility as a government contractor.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), suitably modified to reflect the relationship of the parties, in all subcontracts that may involve access to sensitive information

(End of clause)

[70 FR 35555, June 21, 2005]

1852.237–73 Release of sensitive information.

As prescribed in 1837.203–72(b), insert the following clause:

RELEASE OF SENSITIVE INFORMATION (JUN 2005)

(a) As used in this clause, ''sensitive information'' refers to information, not currently in the public domain, that the Contractor has developed at private expense, that may embody trade secrets or commercial or financial information, and that may be sensitive or privileged.

(b) In accomplishing management activities and administrative functions, NASA relies heavily on the support of various service providers. To support NASA activities and functions, these service providers, as well as their subcontractors and their individual

employees, may need access to sensitive information submitted by the Contractor under this contract. By submitting this proposal or performing this contract, the Contractor agrees that NASA may release to its service providers, their subcontractors, and their individual employees, sensitive information submitted during the course of this procurement, subject to the enumerated protections mandated by the clause at 1852.237–72, Access to Sensitive Information.

(c)(1) The Contractor shall identify any sensitive information submitted in support of this proposal or in performing this contract. For purposes of identifying sensitive information, the Contractor may, in addition to any other notice or legend otherwise required, use a notice similar to the following:

Mark the title page with the following legend:

This proposal or document includes sensitive information that NASA shall not disclose outside the Agency and its service providers that support management activities and administrative functions. To gain access to this sensitive information, a service provider's contract must contain the clause at NFS 1852.237–72, Access to Sensitive Information. Consistent with this clause, the service provider shall not duplicate, use, or disclose the information in whole or in part for any purpose other than to perform the services specified in its contract. This restriction does not limit the Government's right to use this information if it is obtained from another source without restriction. The information subject to this restriction is contained in pages [insert page numbers or other identification of pages].

Mark each page of sensitive information the Contractor wishes to restrict with the following legend:

Use or disclosure of sensitive information contained on this page is subject to the restriction on the title page of this proposal or document.

(2) The Contracting Officer shall evaluate the facts supporting any claim that particular information is ''sensitive.'' This evaluation shall consider the time and resources necessary to protect the information in accordance with the detailed safeguards mandated by the clause at 1852.237–72, Access to Sensitive Information. However, unless the Contracting Officer decides, with the advice of Center counsel, that reasonable grounds exist to challenge the Contractor's claim that particular information is sensitive, NASA and its service providers and their employees shall comply with all of the safeguards contained in paragraph (d) of this clause.

(d) To receive access to sensitive information needed to assist NASA in accomplishing management activities and administrative functions, the service provider must be operating under a contract that contains the clause at 1852.237–72, Access to Sensitive Information. This clause obligates the service provider to do the following:

(1) Comply with all specified procedures and obligations, including the Organizational Conflicts of Interest Avoidance Plan, which the contract has incorporated as a compliance document.

(2) Utilize any sensitive information coming into its possession only for the purpose of performing the services specified in its contract.

(3) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(4) Allow access to sensitive information only to those employees that need it to perform services under its contract.

(5) Preclude access and disclosure of sensitive information to persons and entities outside of the service provider's organization.

(6) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in its contract and to safeguard it from unauthorized use and disclosure.

(7) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

(8) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(e) When the service provider will have primary responsibility for operating an information technology system for NASA that contains sensitive information, the service provider's contract shall include the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources. The Security Requirements clause requires the service provider to implement an Information Technology Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use. Service provider personnel requiring privileged access or limited privileged access to these information technology systems are subject to screening using the standard National Agency Check (NAC) forms appropriate to the level of risk for adverse impact to NASA missions. The Contracting Officer may allow the service provider to conduct its own screening, provided the service provider employs substantially equivalent screening procedures.

(f) This clause does not affect NASA's responsibilities under the Freedom of Information Act.

(g) The Contractor shall insert this clause, including this paragraph (g), suitably modified to reflect the relationship of the parties, in all subcontracts that may require the furnishing of sensitive information.

(End of clause)

[70 FR 35555, June 21, 2005]

1852.239–70 Alternate delivery points.

As prescribed in 1839.106–70(a)(1), insert the following clause:

ALTERNATE DELIVERY POINTS (NOV 1993)

(a) The first priority of this contract is to satisfy the anticipated requirements of ____ (identify contracting activity). However, should the actual requirements of ____ (contracting activity) be less than the maximum quantities/values specified in section B of this contract, ____ (contracting activity) may order the remaining available quantities/values to satisfy the requirements of other installations. The other installations at which delivery may be required are:

(List installations and their locations)

(b) The prices of the deliverables in section B are F.O.B. destination to ____ (contracting activity). If delivery to an alternate location is ordered, an equitable adjustment may be negotiated to recognize any variances in transportation costs associated with delivery to that alternate location.

(End of clause)

Alterate I (NOV 1993). As prescribed in 1839.7008(b), delete paragraph (b) and substitute the following:

(b) The prices of the deliverables in section B are F.O.B. origin with delivery to NASA via Government bill of lading (GBL). If delivery to an alternate location is ordered, the same delivery procedures will be used and no equitable adjustment to any price, term, or condition of this contract will be made as a result of such order.

(End of clause)

[58 FR 59189, Nov. 8, 1993; 58 FR 62556, Nov. 29, 1993, as amended at 62 FR 4477, Jan. 30, 1997; 62 FR 36735, July 9, 1997]

1852.241–70 Renewal of contract.

As prescribed in 48 CFR 1841.501–70, insert the following clause:

RENEWAL OF CONTRACT (DEC 1988)

This contract is renewable on an annual basis at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor at least ____ days before expiration. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed ____ years.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 56 FR 12460, Mar. 26, 1991. Redesignated and amended at 60 FR 16063, Mar. 29, 1995; 62 FR 4477, Jan. 30, 1997]

1852.242–70 Technical direction.

As prescribed in 1842.271, insert the following clause:

TECHNICAL DIRECTION (SEP 1993)

(a) Performance of the work under this contract is subject to the written technical direction of the Contracting Officer Technical Representative (COTR), who shall be specifically appointed by the Contracting Officer in writing in accordance with NASA FAR Supplement 1842.270. ''Technical direction'' means a directive to the Contractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or furnishes similar instruction to the Contractor. Technical direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements in Section C of this contract.

(b) The COTR does not have the authority to, and shall not, issue any instruction purporting to be technical direction that—

(1) Constitutes an assignment of additional work outside the statement of work;

(2) Constitutes a change as defined in the changes clause;

(3) Constitutes a basis for any increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions, or specifications of the contract; or

(5) Interferes with the contractor's rights to perform the terms and conditions of the contract.

(c) All technical direction shall be issued in writing by the COTR.

(d) The Contractor shall proceed promptly with the performance of technical direction duly issued by the COTR in the manner prescribed by this clause and within the COTR's authority. If, in the Contractor's opinion, any instruction or direction by the COTR falls within any of the categories defined in paragraph (b) of this clause, the Contractor

shall not proceed but shall notify the Contracting Officer in writing within 5 working days after receiving it and shall request the Contracting Officer to take action as described in this clause. Upon receiving this notification, the Contracting Officer shall either issue an appropriate contract modification within a reasonable time or advise the Contractor in writing within 30 days that the instruction or direction is—

(1) Rescinded in its entirety; or

(2) Within the requirements of the contract and does not constitute a change under the Changes clause of the contract, and that the Contractor should proceed promptly with its performance.

(e) A failure of the Contractor and the Contracting Officer to agree that the instruction or direction is both within the requirements of the contract and does not constitute a change under the Changes clause, or a failure to agree upon the contract action to be taken with respect to the instruction or direction, shall be subject to the Disputes clause of this contract.

(f) Any action(s) taken by the contractor in response to any direction given by any person other than the Contracting Officer or the COTR shall be at the Contractor's risk.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 56 FR 32119, July 15, 1991; 59 FR 21668, Apr. 26, 1994; 62 FR 36735, July 9, 1997]

1852.242–71 Travel outside of the United States.

As prescribed in 1842.7002, insert the following clause:

TRAVEL OUTSIDE OF THE UNITED STATES (DEC 1988)

(a) The Contracting Officer must authorize in advance and in writing travel to locations outside of the United States by Contractor employees that is to be charged as a cost to this contract. This approval may be granted when the travel is necessary to the efforts required under the contract and it is otherwise in the best interest of NASA.

(b) The Contractor shall submit requests to the Contracting Officer at least 30 days in advance of the start of the travel.

(c) The Contractor shall submit a travel report at the conclusion of the travel. The Contracting Officer's approval of the travel will specify the required contents and distribution of the travel report.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990; 56 FR 12460, Mar. 26, 1991]

1852.242–72 Observance of legal holidays.

As prescribed in 1842.7001(a), insert the following clause:

OBSERVANCE OF LEGAL HOLIDAYS (AUG 1992)

(a) The on-site Government personnel observe the following holidays:

New Year's Day
Labor Day
Martin Luther King, Jr.'s Birthday
Columbus Day
President's Birthday
Veterans Day
Memorial Day
Thanksgiving Day
Independence Day
Christmas Day

Any other day designated by Federal statute, Executive Order, or the President's proclamation.

(b) When any holiday falls on a Saturday, the preceding Friday is observed. When any holiday falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not by itself be cause for an additional period of performance or entitlement of compensation except as set forth within the contract.

(End of clause)

Alterate I (SEP 1989). As prescribed in 1842.7001(b), add the following paragraphs (c) and (d) as Alternate I to the clause.

(c) On-site personnel assigned to this contract shall not be granted access to the installation during the holidays in paragraph (a) of the clause, except as follows: the Contractor shall provide sufficient on-site personnel to perform round-the-clock requirements of critical work already in process, unless otherwise instructed by the Contracting Officer or authorized representative. If the Contractor's on-site personnel work during a holiday other than those in paragraph (a) of the clause, no form of holiday or other premium compensation shall be reimbursed as either a direct or indirect cost. However, this does not preclude reimbursement for authorized overtime work that would have been overtime regardless of the status of the day as a holiday.

(d) The Contractor shall place identical requirements, including this paragraph, in all subcontracts that require performance of work on-site, unless otherwise instructed by the Contracting Officer.

Alternate II (OCT 2000). As prescribed in 1842.7001(c), add the following as paragraphs (e) and (f) if Alternate I is

used, or as paragraphs (c) and (d) if Alternate I is not used. If added as paragraphs (c) and (d), amend the first sentence of paragraph (d) by deleting ''(e)'' and adding ''(c)'' in its place.

(e) When the NASA installation grants administrative leave to its Government employees (e.g., as a result of inclement weather, potentially hazardous conditions, or other special circumstances), Contractor personnel working on-site should also be dismissed. However, the contractor shall provide sufficient onsite personnel to perform round-the-clock requirements of critical work already in process, unless otherwise instructed by the Contracting Officer or authorized representative.

(f) Whenever administrative leave is granted to Contractor personnel pursuant to paragraph (e) of this clause, it shall be without loss to the Contractor. The cost of salaries and wages to the Contractor for the period of any such excused absence shall be a reimbursable item of cost under this contract for employees in accordance with the Contractor's established accounting policy.

[54 FR 39376, Sept. 26, 1989, as amended at 57 FR 40856, Sept. 8, 1992; 62 FR 36735, July 9, 1997; 63 FR 32764, June 16, 1998; 65 FR 58932, Oct. 3, 2000]

1852.242–73 NASA contractor financial management reporting.

As prescribed in 1842.7202, insert the following clause:

NASA CONTRACTOR FINANCIAL MANAGEMENT REPORTING (NOV 2004)

(a) The Contractor shall submit NASA Contractor Financial Management Reports on NASA Forms 533 in accordance with the instructions in NASA Procedures and Guidelines (NPR) 9501.2, NASA Contractor Financial Management Reporting, and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall correlate with technical and schedule reporting, shall be set forth in the Schedule. Contractor implementation of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category and give due regard to the Contractor's established financial management information system.

(b) Lower level detail used by the Contractor for its own management purposes to validate information provided to NASA shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the Schedule or as designated in writing by the Contractor Officer. Upon completion and acceptance by NASA of all contract line items, the Contracting Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only, report only when changes in actual cost incur, or suspend reporting altogether.

(d) The Contractor shall ensure that its Form 533 reports include accurate subcontractor cost data, in the proper reporting categories, for the reporting period.

(e) If during the performance of this contract NASA requires a change in the information or reporting requirements specified in the Schedule, or as provided for in paragraph (a) or (c) of this clause, the Contracting Officer shall effect that change in accordance with the Changes clause of this contract.

(End of clause)

[62 FR 36735, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 65 FR 46628, July 31, 2000; 69 FR 63460, Nov. 2, 2004]

1852.242–78 Emergency Medical Services and Evacuation.

As prescribed in 1842.7003, insert the following clause:

EMERGENCY MEDICAL SERVICES AND EVACUATION—APRIL 2001

The Contractor shall, at its own expense, be responsible for making all arrangements for emergency medical services and evacuation, if required, for its employees while performing work under this contract outside the United States or in remote locations in the United States. If necessary to deal with certain emergencies, the Contractor may request the Government to provide medical or evacuation services. If the Government provides such services, the Contractor shall reimburse the Government for the costs incurred.

(End of clause)

[66 FR 18054, Apr. 5, 2001]

1852.243–70 Engineering change proposals.

As prescribed in 1843.205–70(a)(1), insert the following clause, modified to suit contract type:

ENGINEERING CHANGE PROPOSALS (FEB 1998)

(a) *Definitions.*

''ECP'' means an Engineering Change Proposal (ECP) which is a proposed engineering change and the documentation by which the change is described, justified, and submitted to the procuring activity for approval or disapproval.

(b) Either party to the contract may originate ECPs. Implementation of an approved ECP may occur by either a supplemental agreement or, if appropriate, as a written change order to the contract.

(c) Any ECP submitted to the Contracting Officer shall include a ''not-to-exceed'' ____ [price or estimated cost] increase or decrease adjustment amount, if any, and the required [time of delivery or period of performance] adjustment, if any, acceptable to the originator of the ECP. If the change is originated within the Government, the Contracting Officer shall obtain a written agreement with the Contractor regarding the ''not-to-exceed'' ____ [price or estimated cost] and [delivery or period of performance] adjustments, if any, prior to issuing an order for implementation of the change.

(d) After submission of a Contractor initiated ECP, the Contracting Officer may require the Contractor to submit the following information:

(1) Cost or pricing data in accordance with FAR 15.403–5 if the proposed change meets the criteria for its submission under FAR 15.403–4; or

(2) Information other than cost or pricing data adequate for Contracting Officer determination of price reasonableness or cost realism. The Contracting Officer reserves the right to request additional information if that provided by the Contractor is considered inadequate for that purpose. If the Contractor claims applicability of one of the exceptions to submission of cost or pricing data, it shall cite the exception and provide rationale for its applicability.

(e) If the ECP is initiated by NASA, the Contracting Officer shall specify the cost information requirements, if any.

(End of clause)

Alterate I (JUL 1997). As prescribed in 1843.205–70(a)(2), add the following paragraph (f), modified to suit contract type, to the basic clause:

(f) If the ____ [price or estimated cost] adjustment proposed for any contractor-originated ECP is ____ [insert a percent or dollar amount of the contract price or estimated cost] or less, the ECP shall be executed with no adjustment to the contract ____ [price or estimated cost].

Alternate II (SEPT 1990). As prescribed in 1843.205–70(a)(3), add the following sentence at the end of paragraph (c) of the basic clause:

An ECP accepted in accordance with the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost in the contract Schedule, unless the estimated cost is increased by the change order or other contract modification.

[62 FR 14033, Mar. 25, 1997, as amended at 62 FR 36735, July 9, 1997; 62 FR 40309, July 28, 1997; 63 FR 9966, Feb. 27, 1998; 63 FR 11480, Mar. 9, 1998; 63 FR 17339, Apr. 9, 1998; 67 FR 53549, Oct. 23, 2002]

1852.243–71 Shared savings.

As prescribed in 1843.7102, insert the following clause:

SHARED SAVINGS (MAR 1997)

(a) The Contractor is entitled, under the provisions of this clause, to share in cost savings resulting from the implementation of cost reduction projects which are presented to the Government in the form of Cost Reduction Proposals (CRP) and approved by the Contracting Officer. These cost reduction projects may require changes to the terms, conditions or statement of work of this contract. Any cost reduction projects must not change the essential function of any products to be delivered or the essential purpose of services to be provided under the contract.

(b) Definitions:

(1) *Cost savings*, as contemplated by this clause mean savings that result from instituting changes to the covered contract, as identified in an approved Cost Reduction Proposal.

(2) *Cost Reduction Proposal*—For the purposes of this clause, a Cost Reduction Proposal means a proposal that recommends alternatives to the established procedures and/or organizational support of a contract or group of contracts. These alternatives must result in a net reduction of contract cost and price to NASA. The proposal will include technical and cost information sufficient to enable the Contracting Officer to evaluate the CRP and approve or disapprove it.

(3) *Covered contract*—As used in this provision, covered contract means the contract, including unexercised options but excluding future contracts, whether contemplated or not, against which the CRP is submitted.

(4) *Contractor implementation costs*—As used in this provision, Contractor implementation costs, or ''implementation costs'', shall mean those costs which the Contractor incurs on covered contracts specifically in developing, preparing, submitting, and negotiating a CRP, as well as those costs the Contractor will incur on covered contracts to make any structural or organizational changes in order to implement an approved CRP.

(5) *Government costs*—As used in this provision, the term Government costs means internal costs of NASA, or any other Government agency, which result directly from development and implementation of the CRP.

These may include, but are not limited to, costs associated with the administration of the contract or with such contractually related functions such as testing, operations, maintenance and logistics support. These costs also include costs associated with other Agency contracts (including changes in contract price or cost and fee) that may be affected as a result of the implementation of a CRP. They do not include the normal administrative costs of reviewing and processing the Cost Reduction Proposal.

(c) *General.* The Contractor will develop, prepare and submit CRP's with supporting information as detailed in paragraph (e) of this clause, to the Contracting Officer. The CRP will describe the proposed cost reduction activity in sufficient detail to enable the Contracting Officer to evaluate it and to approve or disapprove it. The Contractor shall share in any net cost savings realized from approved and implemented CRPs in accordance with the terms of this clause. The Contractor's actual percentage share of the cost savings shall be a matter for negotiation with the Contracting Officer, but shall not, in any event, exceed 50 percent of the total cost savings recognized by the Contracting Officer. The Contractor may propose changes in other activities that impact performance on its contract, including Government and other Contractor operations, if such changes will optimize cost savings. A Contractor shall not be entitled to share, however, in any cost savings that are internal to the Government, or which result from changes made to any contracts to which it is not a party even if those changes were proposed as a part of its CRP. Early communication between the Contractor and Government is encouraged. The communication may be in the form of a concept paper or preliminary proposal. The Government is not committed to accepting any proposal as a result of these early discussions.

(d) *Computation of cost savings.* The cost savings to be shared between the Government and the Contractor will be computed by the Contracting Officer by comparing a current estimate to complete (ETC) for the covered contract, as structured before implementation of the proposed CRP, to a revised ETC which takes into account the implementation of that CRP. The cost savings to be shared shall be reduced by any cost overrun, whether experienced or projected, that is identified on the covered contract before implementation of the CRP. Although a CRP may result in cost savings that extend far into the future, the period in which the Contractor may share in those savings will be limited to no more than five years. Implementation costs of the Contractor must be considered and specifically identified in the revised ETC. The Contracting Officer shall offset Contractor cost savings by any increased costs (whether implementing or recurring) to the Government when computing the total cost savings to be shared. The Contractor shall not be entitled, under the provisions of this clause, to share in any cost reductions to the contract that are the result of changes stemming from any action other than an approved CRP. However, this clause does not limit recovery of any such reimbursements that are allowed as a result of other contract provisions.

(e) *Supporting information.* As a minimum, the Contractor shall provide the following supporting information with each CRP:

(1) Identification of the current contract requirements or established procedures and/or organizational support which are proposed to be changed.

(2) A description of the difference between the current process or procedure and the proposed change. This description shall address how proposed changes will meet NASA requirements and discuss the advantages and disadvantages of the existing practice and the proposed changes.

(3) A list of contract requirements which must be revised, if any, if the CRP is approved, along with proposed revisions. Any changes to NASA or delegated contract management processes should also be addressed.

(4) Detailed cost estimates which reflect the implementation costs of the CRP.

(5) An updated ETC for the covered contract, unchanged, and a revised ETC for the covered contract which reflects changes resulting from implementing the CRP. If the CRP proposes changes to only a limited number of elements of the contract, the ETCs need only address those portions of the contract that have been impacted. Each ETC shall depict the level of costs incurred or to be incurred by year, or to the level of detail required by the Contracting Officer. If other CRPs have been proposed or approved on a contract, the impact of these CRPs must be addressed in the computation of the cost savings to ensure that the cost savings identified are attributable only to the CRP under consideration in the instant case.

(6) Identification of any other previous submissions of the CRP, including the dates submitted, the agencies and contracts involved, and the disposition of those submittals.

(f) *Administration.* (1) The Contractor shall submit proposed CRPs to the Contracting Officer who shall be responsible for the review, evaluation and approval. Normally, CRP's should not be entertained for the first year of performance to allow the Contracting Officer to assess performance against the basic requirements. If a cost reduction project impacts more than a single contract, the Contractor may, upon concurrence of the Contracting Officers responsible for the affected contracts, submit a single CRP which addresses fully the cost savings projected on all affected contracts that contain this Shared

Savings Clause. In the case of multiple contracts affected, responsibility for the review and approval of the CRP will be a matter to be decided by the affected Contracting Officers.

(2) Within 60 days of receipt, the Contracting Officer shall complete an initial evaluation of any proposed cost reduction plan to determine its feasibility. Failure of the Contracting Officer to provide a response within 60 days shall not be construed as approval of the CRP. The Government shall promptly notify the Contractor of the results of its initial evaluation and indicate what, if any, further action will be taken. If the Government determines that the proposed CRP has merit, it will open discussions with the Contractor to establish the cost savings to be recognized, the Contractor's share of the cost savings, and a payment schedule. The Contractor shall continue to perform in accordance with the terms and conditions of the existing contract until a contract modification is executed by the Contracting Officer. The modification shall constitute approval of the CRP and shall incorporate the changes identified by the CRP, adjust the contract cost and/or price, establish the Contractor's share of cost savings, and incorporate the agreed to payment schedule.

(3) The Contractor will receive payment by submitting invoices to the Contracting Officer for approval. The amount and timing of individual payments will be made in accordance with the schedule to be established with the Contracting Officer. Notwithstanding the overall savings recognized by the Contracting Officer as a result of an approved CRP, payment of any portion of the Contractor's share of savings shall not be made until NASA begins to realize a net cost savings on the contract (i.e., implementation, startup and other increased costs resulting from the change have been offset by cumulative cost savings). Savings associated with unexercised options will not be paid unless and until the contract options are exercised. It shall be the responsibility of the Contractor to provide such justification as the Contracting Officer deems necessary to substantiate that cost savings are being achieved.

(4) Any future activity, including a merger or acquisition undertaken by the Contractor (or to which the Contractor becomes an involved party), which has the effect of reducing or reversing the cost savings realized from an approved CRP for which the Contractor has received payment may be cause for recomputing the net cost savings associated with any approved CRP. The Government reserves the right to make an adjustment to the Contractor's share of cost savings and to receive a refund of moneys paid if necessary. Such adjustment shall not be made without notifying the Contractor in advance of the intended action and affording the Contractor an opportunity for discussion.

(g) *Limitations.* Contract requirements that are imposed by statute shall not be targeted for cost reduction exercises. The Contractor is precluded from receiving reimbursements under both this clause and other incentive provisions of the contract, if any, for the same cost reductions.

(h) Disapproval of, or failure to approve, any proposed cost reduction proposal shall not be considered a dispute subject to remedies under the Disputes clause.

(i) Cost savings paid to the Contractor in accordance with the provisions of this clause do not constitute profit or fee within the limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b).

(End of clause)

[62 FR 14033, Mar. 25, 1997]

1852.243–72 Equitable adjustments.

As prescribed in 1843.205–70(b), insert the following clause.

EQUITABLE ADJUSTMENTS (APR 1998)

(a) The provisions of all other clauses contained in this contract which provide for an equitable adjustment, including those clauses incorporated by reference with the exception of the ''Suspension of Work'' clause (FAR 52.242–14), are supplemented as follows:

Upon written request, the Contractor shall submit a proposal for review by the Government. The proposal shall be submitted to the contracting officer within the time limit indicated in the request or any extension thereto subsequently granted. The proposal shall provide an itemized breakdown of all increases and decreases in the contract for the Contractor and each subcontractor in at least the following detail: material quantities and costs; direct labor hours and rates for each trade; the associated FICA, FUTA, SUTA, and Workmen's Compensation Insurance; and equipment hours and rates.

(b) The overhead percentage cited below shall be considered to include all indirect costs including, but not limited to, field and office supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. ''Commission'' is defined as profit on work performed by others. The percentages for overhead, profit, and commission are negotiable according to the nature, extent, and complexity of the work involved, but in no case shall they exceed the following ceilings:

	Overhead (percent)	Profit (percent)	Commission
To Contractor on work performed by other than its own forces	—	—	10
To first tier subcontractor on work performed by its subcontractors	—	—	10
To Contractor and/or subcontractors on work performed with their own forces	10	10	—

(c) Not more than four percentages for overhead, profit, and commission shall be allowed regardless of the number of subcontractor tiers.

(d) The Contractor or subcontractor shall not be allowed overhead or commission on the overhead, profit, and/or commission received by its subcontractors.

(e) Equitable adjustments for deleted work shall include credits, limited to the same percentages for overhead, profit, and commission in paragraph (b) of this clause.

(f) On proposals covering both increases and decreases in the amount of the contract, the application of the overhead, profit, and commission shall be on the net change in direct costs for the Contractor or the subcontractor performing the work.

(g) After receipt of the Contractor's proposal, the contracting officer shall act within a reasonable period, provided that when the necessity to proceed with a change does not permit time to properly check the proposal, or in the event of a failure to reach an agreement on a proposal, the contracting officer may order the Contractor to proceed on the basis of the price being determined at the earliest practicable date. In such a case, the price shall not be more than the increase or less than the decrease proposed.

(End of clause)

[63 FR 17339, Apr. 9, 1998]

1852.244–70 Geographic participation in the aerospace program.

As prescribed in 1844.204–70, insert the following clause:

GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM (APR 1985)

(a) It is the policy of the National Aeronautics and Space Administration to advance a broad participation by all geographic regions in filling the scientific, technical, research and development, and other needs of the aerospace program.

(b) The Contractor agrees to use its best efforts to solicit subcontract sources on the broadest feasible geographic basis consistent with efficient contract performance and without impairment of program effectiveness or increase in program cost.

(c) The Contractor further agrees to insert this clause in all subcontracts of $100,000 and over.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 14034, Mar. 25, 1997]

1852.245–70 Contractor requests for Government-provided equipment.

As prescribed in 1845.107–70(a)(1), insert the following clause:

CONTRACTOR REQUESTS FOR GOVERNMENT-PROVIDED EQUIPMENT (JAN 2011)

(a) The Contractor shall provide all property required for the performance of this contract. The Contractor shall not acquire or construct items of property to which the Government will have title under the provisions of this contract without the Contracting Officer's written authorization. Property which will be acquired as a deliverable end item as material or as a component for incorporation into a deliverable end item is exempt from this requirement. Property approved as part of the contract award or specifically required within the statement of work is exempt from this requirement.

(b)(1) In the event the Contractor is unable to provide the property necessary for performance, and the Contractor requests provision of property by the Government, the Contractor's request shall—

(i) Justify the need for the property;

(ii) Provide the reasons why contractor-owned property cannot be used;

(iii) Describe the property in sufficient detail to enable the Government to screen its inventories for available property or to otherwise acquire property, including applicable manufacturer, model, part, catalog, National Stock Number or other pertinent identifiers;

(iv) Combine requests for quantities of items with identical descriptions and estimated values when the estimated values do not exceed $100,000 per unit; and

(v) Include only a single unit when the acquisition or construction value equals or exceeds $100,000.

(2) Contracting Officer authorization is required for items the Contractor intends to manufacture as well as those it intends to purchase.

(3) The Contractor shall submit requests to the Contracting Officer no less than 30 days in advance of the date the Contractor would, should it receive authorization, acquire or begin fabrication of the item.

(c) The Contractor shall maintain copies of Contracting Officer authorizations, appropriately cross-referenced to the individual property record, within its property management system.

(d) Property furnished from Government excess sources is provided as-is, where-is. The Government makes no warranty regarding its applicability for performance of the contract or its ability to operate. Failure of property obtained from Government excess sources under this clause is insufficient reason for submission of requests for equitable adjustments discussed in the clause at FAR 52.245–1, Government Property, as incorporated in this contract.

(End of clause)

Alterate I (JAN 2011) As prescribed in 1845.107–70(a)(2), add the following paragraph (e).

(e) In the event the Contracting Officer issues written authorization to provide property, the Contractor shall screen Government sources to determine the availability of property from Government inventory or excess property.

(1) The Contractor shall review NASA inventories and other authorized Federal excess sources for availability of items that meet the performance requirements of the requested property.

(i) If the Contractor determines that a suitable item is available from NASA supply inventory, it shall request the item using applicable Center procedures.

(ii) If the Contractor determines that an item within NASA or Federal excess is suitable, it shall contact the Center Industrial Property Officer to arrange for transfer of the item from the identified source to the Contractor.

(2) If the Contractor determines that the required property is not available from inventory or excess sources, the Contractor shall note the acquisition file with a list of sources reviewed and the findings regarding the lack of availability. If the required property is available, but unsuitable for use, the contractor shall document the rationale for rejection of available property. The Contractor shall retain appropriate cross-referenced documentary evidence of the outcome of those screening efforts as part of its property records system.

[76 FR 2006, Jan. 12, 2011]

1852.245–71 Installation-accountable Government property.

As prescribed in 1845.107–70(b)(1), insert the following clause:

INSTALLATION-ACCOUNTABLE GOVERNMENT PROPERTY (JAN 2011)

(a) The Government property described in paragraph (c) of this clause may be made available to the Contractor on a no-charge basis for use in performance of this contract. This property shall be utilized only within the physical confines of the NASA installation that provided the property unless authorized by the Contracting Officer under (b)(1)(iv). Under this clause, the Government retains accountability for, and title to, the property, and the Contractor shall comply with the following:

NASA Procedural Requirements (NPR) 4100.1, NASA Materials Inventory Management Manual;

NASA Procedural Requirements (NPR) 4200.1, NASA Equipment Management Procedural Requirements;

NASA Procedural Requirement (NPR) 4300.1, NASA Personal Property Disposal Procedural Requirements;

[Insert any additional property management responsibilities.].

Property not recorded in NASA property systems must be managed in accordance with the requirements of the clause at FAR 52.245–1, as incorporated in this contract.

The Contractor shall establish and adhere to a system of written procedures to assure continued, effective management control and compliance with these user responsibilities. In accordance with FAR 52.245–1(h)(1) the contractor shall be liable for property lost, damaged, destroyed or stolen by the contractor or their employees when determined responsible by a NASA Property Survey Board, in accordance with the NASA guidance in this clause.

(b)(1) The official accountable recordkeeping, financial control, and reporting of the property subject to this clause shall be retained by the Government and accomplished within NASA management information systems prescribed by the installation Supply and Equipment Management Officer (SEMO) and Financial Management Officer. If this contract provides for the Contractor to acquire property, title to which will vest in the Government, the following additional procedures apply:

(i) The Contractor's purchase order shall require the vendor to deliver the property to the installation central receiving area.

(ii) The Contractor shall furnish a copy of each purchase order, prior to delivery by the vendor, to the installation central receiving area.

(iii) The Contractor shall establish a record for Government titled property as required by FAR 52.245–1, as incorporated in this contract, and shall maintain that record until accountability is accepted by the Government.

(iv) Contractor use of Government property at an off-site location and off-site subcontractor use requires advance approval of the Contracting Officer and notification of the Industrial Property Officer. The property shall be considered Government furnished and the Contractor shall assume accountability and financial reporting responsibility. The Contractor shall establish records and property control procedures and maintain the property in accordance with the requirements of FAR 52.245–1, Government Property (as incorporated in this contract), until its return to the installation. NASA Procedural Requirements related to property loans shall not apply to offsite use of property by contractors.

(2) After transfer of accountability to the Government, the Contractor shall continue to maintain such internal records as are necessary to execute the user responsibilities identified in paragraph (a) of this clause and document the acquisition, billing, and disposition of the property. These records and supporting documentation shall be made available, upon request, to the SEMO and any other authorized representatives of the Contracting Officer.

(c) The following property and services are provided if checked:

(1) Office space, work area space, and utilities. Government telephones are available for official purposes only.

(2) Office furniture.

(3) Property listed in [Insert attachment number or ''not applicable'' if no equipment is provided].

(i) If the Contractor acquires property, title to which vests in the Government pursuant to other provisions of this contract, this property also shall become accountable to the Government upon its entry into Government records.

(ii) The Contractor shall not bring to the installation for use under this contract any property owned or leased by the Contractor, or other property that the Contractor is accountable for under any other Government contract, without the Contracting Officer's prior written approval.

(4) Supplies from stores stock.

(5) Publications and blank forms stocked by the installation.

(6) Safety and fire protection for Contractor personnel and facilities.

(7) Installation service facilities: [Insert the name of the facilities or ''none''].

(8) Medical treatment of a first-aid nature for Contractor personnel injuries or illnesses sustained during on-site duty.

(9) Cafeteria privileges for Contractor employees during normal operating hours.

(10) Building maintenance for facilities occupied by Contractor personnel.

(11) Moving and hauling for office moves, movement of large equipment, and delivery of supplies. Moving services may be provided on-site, as approved by the Contracting Officer.

(End of clause)

Alterate I (JAN 2011) As prescribed in 1845.107–70(b)(4), substitute the following for paragraph (b)(1)(i) of the basic clause:

(i) The Contractor shall not utilize the installation's central receiving facility for receipt of contractor-acquired property. However, the Contractor shall provide listings suitable for establishing accountable records of all such property received, on a monthly basis, to the SEMO.

[76 FR 2006, Jan. 12, 2011]

1852.245–72 Liability for Government property furnished for repair or other services.

As prescribed in 1845.107–70(c), insert the following clause:

LIABILITY FOR GOVERNMENT PROPERTY FURNISHED FOR REPAIR OR OTHER SERVICES (JAN 2011)

(a) This clause shall govern with respect to any Government property furnished to the Contractor for repair or other services that is to be returned to the Government. Such property, hereinafter referred to as ''Government property furnished for servicing,'' shall not be subject to FAR 52.245–1, Government Property.

(b) The official accountable recordkeeping and financial control and reporting of the property subject to this clause shall be retained by the Government. The Contractor shall maintain adequate records and procedures to ensure that the Government property furnished for servicing can be readily accounted for and identified at all times while in its custody or possession or in the custody or possession of any subcontractor.

(c) The Contractor shall be liable for any loss, damage, or destruction of the Government property furnished for servicing when caused by the Contractor's failure to exercise such care and diligence as a reasonable prudent owner of similar property would exercise under similar circumstances. The Contractor shall not be liable for loss, damage, or destruction of Government property furnished for servicing resulting from any other cause except to the extent that the loss, damage, or destruction is covered by insurance (including self-insurance funds or reserves).

(d) The Contractor shall hold the Government harmless and shall indemnify the Government against all claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the Government property

furnished for servicing or arising from the presence of that property on the Contractor's premises or property.

(End of clause)

[76 FR 2006, Jan. 12, 2011]

1852.245–73 Financial reporting of NASA property in the custody of contractors.

As prescribed in 1845.106–70(d), insert the following clause:

FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS (JAN 2011)

(a) The Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with this clause, the instructions on the form and NFS subpart 1845.71, and any supplemental instructions for the current reporting period issued by NASA.

(b)(1) Subcontractor use of NF 1018 is not required by this clause; however, the Contractor shall include data on property in the possession of subcontractors in the annual NF 1018.

(2) The Contractor shall mail the original signed NF 1018 directly to the cognizant NASA Center Deputy Chief Financial Officer, Finance, unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(3) One copy shall be submitted (through the Department of Defense (DOD) Property Administrator if contract administration has been delegated to DOD) to the following address: [Insert name and address of appropriate NASA Center office.], unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(c)(1) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 15. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 15. Some activity may be estimated for the month of September, if necessary, to ensure the NF 1018 is received when due. However, contractors' procedures must document the process for developing these estimates based on planned activity such as planned purchases or NASA Form 533 (NF 533 Contractor Financial Management Report) cost estimates. It should be supported and documented by historical experience or other corroborating evidence, and be retained in accordance with FAR Subpart 4.7, Contractor Records Retention. Contractors shall validate the reasonableness of the estimates and associated methodology by comparing them to the actual activity once that data is available, and adjust them accordingly. In addition, differences between the estimated cost and actual cost must be adjusted during the next reporting period. Contractors shall have formal policies and procedures, which address the validation of NF 1018 data, including data from subcontractors, and the identification and timely reporting of errors. The objective of this validation is to ensure that information reported is accurate and in compliance with the NASA FAR Supplement. If errors are discovered on NF 1018 after submission, the contractor shall contact the cognizant NASA Center Industrial Property Officer (IPO) within 30 days after discovery of the error to discuss corrective action.

(2) The Contracting Officer may, in NASA's interest, withhold payment until a reserve not exceeding $25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports in accordance with NFS subpart 1845.71 and any supplemental instructions for the current reporting period issued by NASA. Such reserve shall be withheld until the Contracting Officer has determined that NASA has received the required reports. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(d) A final report shall be submitted within 30 days after disposition of all property subject to reporting when the contract performance period is complete in accordance with paragraph (b)(1) through (3) of this clause.

(End of clause)

[76 FR 2006, Jan. 12, 2011]

1852.245–74 Identification and marking of Government equipment.

As prescribed by 1845.107–70(e), insert the following clause.

IDENTIFICATION AND MARKING OF GOVERNMENT EQUIPMENT (JAN 2011)

(a) The Contractor shall identify all equipment to be delivered to the Government using NASA Technical Handbook (NASA–HDBK) 6003, Application of Data Matrix Identification Symbols to Aerospace Parts Using Direct Part Marking Methods/Techniques, and NASA Standard (NASA–STD) 6002, Applying Data Matrix Identification Symbols on Aerospace Parts or through the use of commercial marking techniques that: (1) are sufficiently durable to remain intact through the typical lifespan of the property: and, (2) contain the data and data format required by the standards. This requirement

includes deliverable equipment listed in the schedule and other equipment when no longer required for contract performance and NASA directs physical transfer to NASA or a third party. The Contractor shall identify property in both machine and human readable form unless the use of a machine readable-only format is approved by the NASA Industrial Property Officer.

(b) Equipment shall be marked in a location that will be human readable, without disassembly or movement of the equipment, when the items are placed in service unless such placement would have a deleterious effect on safety or on the item's operation.

(c) Concurrent with equipment delivery or transfer, the Contractor shall provide the following data in an electronic spreadsheet format:

(1) Item Description.

(2) Unique Identification Number (License Tag).

(3) Unit Price.

(4) An explanation of the data used to make the unique identification number.

(d) For equipment no longer needed for contract performance and physically transferred under paragraph (a) of this clause, the following additional data is required:

(1) Date originally placed in service.

(2) Item condition.

(e) The data required in paragraphs (c) and (d) of this clause shall be delivered to the NASA center receiving activity listed below:

_____

_____

_____

(f) The contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that require delivery of equipment.

(End of clause)

[76 FR 2006, Jan. 12, 2011]

1852.245–75 Property management changes.

As prescribed in 1845.107–70(f), insert the following clause.

PROPERTY MANAGEMENT CHANGES (JAN 2011)

(a) The Contractor shall submit any changes to standards and practices used for management and control of Government property under this contract to the assigned property administrator prior to making the change whenever the change—

(1) Employs a standard that allows increase in thresholds or changes the timing for reporting loss, damage, or destruction of property;

(2) Alters physical inventory timing or procedures;

(3) Alters recordkeeping practices;

(4) Alters practices for recording the transport or delivery of Government property; or

(5) Alters practices for disposition of Government property.

(End of clause)

[76 FR 2006, Jan. 12, 2011]

1852.245–76 List of Government property furnished pursuant to FAR 52.245–1.

As prescribed in 1845.107–70(g), insert the following clause:

LIST OF GOVERNMENT PROPERTY FURNISHED PURSUANT TO FAR 52.245–1 (JAN 2011)

For performance of work under this contract, the Government will make available Government property identified below or in Attachment [Insert attachment number or ''not applicable''] of this contract on a no charge-for-use basis pursuant to the clause at FAR 52.245–1, Government Property, as incorporated in this contract. The Contractor shall use this property in the performance of this contract at [Insert applicable site(s) where property will be used] and at other location(s) as may be approved by the Contracting Officer. Under FAR 52.245–1, the Contractor is accountable for the identified property.

(End of clause)

[76 FR 2006, Jan. 12, 2011]

1852.245–77 List of Government property furnished pursuant to FAR 52.245–2.

As prescribed in 1845.107–70(h), insert the following clause:

LIST OF GOVERNMENT PROPERTY FURNISHED PURSUANT TO FAR 52.245–2 (JAN 2011)

For performance of work under this contract, the Government will make available Government property identified below or in Attachment ____ [Insert attachment number or ''not applicable''] of this contract on a nocharge-for-use basis pursuant to FAR 52.245–2, Government Property Installation Operation Services, as incorporated in this contract. The Contractor shall use this property in the performance of this contract at ____ [Insert applicable site(s) where property will be used] and at other location(s) as may be approved by the Contracting Officer.

[Insert a description of the item(s), acquisition date, quantity, acquisition cost, and applicable equipment information]

(End of clause)

[76 FR 2006, Jan. 12, 2011]

1852.245–78 Physical inventory of capital personal property.

As prescribed in 1845.107–70(i), insert the following clause.

PHYSICAL INVENTORY OF CAPITAL PERSONAL PROPERTY (JAN 2011)

(a) In addition to physical inventory requirements under the clause at FAR 52.245–1, Government Property, as incorporated in this contract, the Contractor shall conduct annual physical inventories for individual property items with an acquisition cost exceeding $100,000.

(1) The Contractor shall inventory—

(i) Items of property furnished by the Government;

(ii) Items acquired by the Contractor and titled to the Government under the clause at FAR 52.245–1;

(iii) Items constructed by the Contractor and not included in the deliverable, but titled to the Government under the clause at FAR 52.245–1; and

(iv) Complete but undelivered deliverables.

(2) The Contractor shall use the physical inventory results to validate the property record data, specifically location and use status, and to prepare summary reports of inventory as described in paragraph (c) of this clause.

(b) Unless specifically authorized in writing by the Property Administrator, the inventory shall be performed and posted by individuals other than those assigned custody of the items, responsibility for maintenance, or responsibility for posting to the property record. The Contractor may request a waiver from this separation of duties requirement from the Property Administrator, when all of the conditions in either (1) or (2) of this paragraph are met.

(1) The Contractor utilizes an electronic system for property identification, such as a laser bar-code reader or radio frequency identification reader, and

(i) The programs or software preclude manual data entry of inventory identification data by the individual performing the inventory; and

(ii) The inventory and property management systems contain sufficient management controls to prevent tampering and assure proper posting of collected inventory data.

(2) The Contractor has limited quantities of property, limited personnel, or limited property systems; and the Contractor provides written confirmation that the Government property exists in the recorded condition and location;

(3) The Contractor shall submit the request to the cognizant property administrator and obtain approval from the property administrator prior to implementation of the practice.

(c) The Contractor shall report the results of the physical inventory to the property administrator within 10 calendar days of completion of the physical inventory. The report shall—

(1) Provide a summary showing number and value of items inventoried; and

(2) Include additional supporting reports of—

(i) Loss in accordance with the clause at 52.245–1, Government Property;

(ii) Idle property available for reuse or disposition; and

(iii) A summary of adjustments made to location, condition, status, or user as a result of the physical inventory reconciliation.

(d) The Contractor shall retain auditable physical inventory records, including records supporting transactions associated with inventory reconciliation. All records shall be subject to Government review and/or audit.

(End of clause)

[76 FR 2006, Jan. 12, 2011]

1852.245–79 Records and disposition reports for Government property with potential historic or significant real value.

As prescribed in 1845.107–70(j), insert the following clause.

RECORDS AND DISPOSITION REPORTS FOR GOVERNMENT PROPERTY WITH POTENTIAL HISTORIC OR SIGNIFICANT REAL VALUE (JAN 2011)

(a) In addition to the property record data required by the clause at FAR 52.245–1, Government Property as incorporated in this contract, Contractor records of all Government property under this contract shall—

(1) Identify the projects or missions that used the items;

(2) Specifically identify items of flown property;

(3) When known, associate individual items of property used in space flight operations with the using astronaut(s); and

(4) Identify property used in test activity and, when known, the individuals who 0conducted the test.

(b) The Contractor shall include this information within item descriptions—

(1) On any Standard Form 1428, Inventory Schedule;

(2) In automated disposition systems;

(3) In any other disposition related reports; and

(4) In other requests for disposition instructions.

(c) The Contractor shall not remove NASA identification or markings from Government property prior to or during disposition without the advanced written approval of the Plant Clearance Officer.

(End of clause)

[76 FR 2006, Jan. 12, 2011]

1852.245–80 Government property management information.

As prescribed in 1845.107–70(k)(1), insert the following provision.

GOVERNMENT PROPERTY MANAGEMENT INFORMATION (JAN 2011)

(a) The offeror shall identify the industry leading or voluntary consensus standards, and/or the industry leading practices, that it intends to employ for the management of Government property under any contract awarded from this solicitation.

(b) The offeror shall provide the date of its last Government property control system analysis along with its overall status, a summary of findings and recommendations, the status of any recommended corrective actions, the name of the Government activity that performed the analysis, and the latest available contact information for that activity.

(c) The offeror shall identify any property it intends to use in performance of this contract from the list of available Government property in the provision at 1852.245–81, List of Available Government Property.

(d) The offeror shall identify all Government property in its possession, provided under other Government contracts that it intends to use in the performance of this contract. The offeror shall also identify: The contract that provided the property, the responsible Contracting Officer, the dates during which the property will be available for use (including the first, last, and all intervening months), and, for any property that will be used concurrently in performing two or more contracts, the amounts of the respective uses in sufficient detail to support prorating the rent, the amount of rent that would otherwise be charged in accordance with FAR 52.245–9, Use and Charges (June 2007), and the contact information for the responsible Government Contracting Officer. The offeror shall provide proof that such use was authorized by the responsible Contracting Officer.

(e) The offeror shall disclose cost accounting practices that allow for direct charging of commercially available equipment, when commercially available equipment is to be used in performance of the contract and the equipment is not a deliverable.

(f) The offeror shall identify, in list form, any equipment that it intends to acquire and directly charge to the Government under this contract. The list shall include a description, manufacturer, model number (when available), quantity required, and estimated unit cost. Equipment approved as part of the award need not be requested under NFS clause 1852.245–70,

(g) The offeror shall disclose its intention to acquire any parts, supplies, materials or equipment, to fabricate an item of equipment for use under any contract resulting from this solicitation when that item of equipment:

Will be titled to the government under the provisions of the contract; is not included as a contract deliverable; and the Contractor intends to charge the costs of materials directly to the contract. The disclosure shall identify the end item or system and shall include all descriptive information, identification numbers (when available), quantities required and estimated costs.

(h) Existing Government property may be reviewed at the following locations, dates, and times: [Enter the appropriate information]

(End of provision)

Alterate 1 (JAN 2011) As prescribed in 1845.107–70(k)(2) add the following paragraph (i).

(i) Existing available Government property listed in the provision at 1852.245–81 is provided ''as-is.'' NASA makes no warranty regarding its performance or condition. The offeror uses this property at its own risk and should make its own assessment of the property's suitability for use. The equitable adjustment provisions of the clause at 52.245–1, Government Property as included in this solicitation, are not applicable to this property. The offeror must obtain the Contracting Officer's written approval before acquiring replacement property when it intends to charge the cost directly to the contract.

[76 FR 2006, Jan. 12, 2011]

1852.245–81 List of available Government property.

As prescribed in 1845.107–70(l), insert the following provision.

LIST OF AVAILABLE GOVERNMENT PROPERTY (JAN 2011)

(a) The Government will make the following Government property available for use in performance of the contract resulting from this solicitation, on a no-charge-for-use basis in accordance with FAR 52.245–1, Government Property, included in this solicitation. The offeror shall notify the Government, as part of its proposal, of its intention to use or not use the property.

(b) The Government will make the following Government property available for use in performance of the contract resulting from this solicitation, on a no-charge-for-use basis in accordance with FAR 52.245–2, Government Property Installation Operation Services, as included in this solicitation. The offeror shall notify the Government of its intention to use or not use the property.

(c) The selected Contractor will be responsible for costs associated with transportation, and installation of the property listed in this provision.

(End of provision)

[76 FR 2006, Jan. 12, 2011]

1852.245–82 Occupancy management requirements.

As prescribed in 1845.106–70(m), insert the following clause:

OCCUPANY MANAGEMENT REQUIREMENTS (JAN 2011)

(a) In addition to the requirements of the clause at FAR 52.245–1, Government Property, as included in this contract, the Contractor shall comply with the following in performance of work in and around Government real property:

(1) NPD 8800.14, Policy for Real Property Management.

(2) NPR 8831.2, Facility Maintenance Management.

[Insert any additional Center occupancy requirements here]

(b) The Contractor shall obtain the written approval of the Contracting Officer before installing or removing Contractor-owned property onto or into any Government real property or when movement of Contractor-owned property may damage or destroy Government-owned property. The Contractor shall restore damaged property to its original condition at the Contractor's expense.

(c) The Contractor shall not acquire, construct or install any fixed improvement or structural alterations in Government buildings or other real property without the advance, written approval of the Contracting Officer. Fixed improvement or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. Title to such property shall vest in the Government.

(d) The Contractor shall report any real property or any portion thereof when it is no longer required for performance under the contract, as directed by the Contracting Officer.

(End of clause)

[76 FR 2006, Jan. 12, 2011]

1852.245–83 Real property management requirements.

As prescribed in 1845.106–70(n), insert the following clause:

REAL PROPERTY MANAGEMENT REQUIREMENTS (JAN 2011)

(a) In addition to the requirements of the FAR Government Property Clause incorporated in this contract (FAR 52.245–1), the Contractor shall comply with the following in performance of any maintenance, construction, modification, demolition, or management activities of any Government real property:

(1) NPD 8800.14, Policy for Real Property Management.

(2) NPR 8831.2, Facility Maintenance Management.

[Insert any real property related Center requirements here]

(b) Within 30 calendar days following award, the Contractor shall provide a plan for maintenance of Government real property provided for use under this contract. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Contracting Officer the need for replacement and/or capital rehabilitation. Upon acceptance by the Contracting Officer, the program shall become a requirement under this contract.

(c) Title to parts replaced by the Contractor in carrying out its normal maintenance obligations shall pass to and vest in the Government upon completion of their installation in the facilities. The Contractor shall keep the property free and clear of all liens and encumbrances.

(d) The Contractor shall keep records of all work done to real property, including plans, drawings, charts, warranties, and manuals. Records shall be complete and current. Record of all transactions shall be auditable. The Government shall have access to these records at all reasonable times, for the purposes of reviewing, inspecting, and evaluating the Contractor's real property management effectiveness. When real property is disposed of under this contract, the Contractor shall deliver the related records to the Government.

(e) The Contracting Officer may direct the Contractor in writing to reduce the work required by the maintenance program authorized in paragraph (b) of this clause at any time.

(End of clause)

[76 FR 2006, Jan. 12, 2011]

1852.246–70 Mission Critical Space System Personnel Reliability Program.

As prescribed in 1846.370(a), insert the following clause:

MISSION CRITICAL SPACE SYSTEM PERSONNEL RELIABILITY PROGRAM (MAR 1997)

(a) In implementation of the Mission Critical Space System Personnel Reliability Program, described in 14 CFR 1214.5, the Government shall identify personnel positions that are mission critical. Some of the positions as identified may now or in the future be held by employees of the Contractor. Upon notification by the Contracting Officer that a mission-critical position is being or will be filled by one or more of the Contractor's employees, the Contractor shall (1) provide the affected employees with a clear understanding of the investigative and medical requirements and, (2) to the extent permitted by applicable law, assist the Government by furnishing personal data and medical records.

(b) The standard that will be used in certifying individuals for a mission-critical position is that they must be determined to be suitable, competent, and reliable in the performance of their assigned duties in accordance with the screening requirements 14 CFR 1214.5. If the Government determines that a Contractor employee occupying or nominated to occupy a mission-critical position will not be certified for such duty, the Contracting Officer shall (1) furnish to the employee the specific reasons for its action; (2) advise the employee that he/she may avail himself/herself of the review procedures that are a part of the certification system; and (3) furnish him/her a copy of those procedures upon request.

(c) If a Contractor employee who has been nominated for (but has not yet filled) a mission-critical position is not certified, the Contractor agrees to defer the appointment to the position until the employee has had an opportunity to pursue the referenced procedures. If the employee is an incumbent to the position, the Contractor agrees, upon the request of the Government, to remove him/her from the position temporarily pending an appeal of the action under the review procedures. If any employee not certified elects not to take action under the procedures, or, if having taken action, is not successful in obtaining a reversal of the determination, the Contractor agrees not to appoint the employee to the position, or if already appointed, to promptly remove the employee.

(End of clause)

[62 FR 14034, Mar. 25, 1997]

1852.246–71 Government contract quality assurance functions.

As prescribed in 1846.470, insert the following clause:

GOVERNMENT CONTRACT QUALITY ASSURANCE FUNCTIONS (OCT 1988)

In accordance with the inspection clause of this contract, the Government intends to perform the following functions at the locations indicated:

Item	Quality Assurance Function	Location

[Insert the items involving quality assurance, the quality assurance functions, and where the functions will be performed]

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 19, 1990; 62 FR 14035, Mar. 25, 1997]

1852.246–72 Material inspection and receiving report.

As prescribed in 1846.674, insert the following clause:

MATERIAL INSPECTION AND RECEIVING REPORT (AUG 2003)

(a) At the time of each delivery to the Government under this contract, the Contractor shall furnish a Material Inspection and Receiving Report (DD Form 250 series) prepared in ____ [Insert number of copies, including original] copies, an original and ____ copies [Insert number of copies].

(b) The Contractor shall prepare the DD Form 250 in accordance with NASA FAR Supplement 1846.6. The Contractor shall enclose the copies of the DD Form 250 in the package or seal them in a waterproof envelope, which shall be securely attached to the exterior of the package in the most protected location.

(c) When more than one package is involved in a shipment, the Contractor shall list on the DD Form 250, as additional information, the quantity of packages and the package numbers. The Contractor shall forward the DD Form 250 with the lowest numbered package of the shipment and print the words ''CONTAINS DD FORM 250'' on the package.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 60 FR 40521, Aug. 9, 1995; 62 FR 14035, Mar. 25, 1997; 68 FR 45169, Aug. 1, 2003]

1852.246–73 Human space flight item.

As prescribed in 1845.370(b), insert the following clause:

HUMAN SPACE FLIGHT ITEM (MAR 1997)

The Contractor shall include the following statement in all subcontracts and purchase orders placed by it in support of this contract, without exception as to amount or subcontract level:

''FOR USE IN HUMAN SPACE FLIGHT; MATERIALS, MANUFACTURING, AND WORKMANSHIP OF HIGHEST QUALITY STANDARDS ARE ESSENTIAL TO ASTRONAUT SAFETY.

IF YOU ARE ABLE TO SUPPLY THE DESIRED ITEM WITH A HIGHER QUALITY THAN THAT OF THE ITEMS SPECIFIED OR PROPOSED, YOU ARE REQUESTED TO BRING THIS FACT TO THE IMMEDIATE ATTENTION OF THE PURCHASER.''

(End of clause)

[62 FR 14035, Mar. 25, 1997]

1852.247–71 Protection of the Florida manatee.

As prescribed in 1847.7001, insert the following clause:

PROTECTION OF THE FLORIDA MANATEE (MAR 1989)

(a) Pursuant to the Endangered Species Act of 1973 (Pub. L. 93–205), as amended, and the Marine Mammals Protection Act of 1972 (Pub. L. 92–522), the Florida Manatee (Trichechus Manatus) has been designated an endangered species, and the Banana and Indian Rivers within and adjacent to NASA's Kennedy Space Center (KSC) have been designated as a critical habitat of the Florida Manatee.

(b) Contractor personnel involved in vessel operations, dockside work, and selected disassembly functions shall be provided training relative to (1) habits and characteristics of the Florida Manatee, (2) provisions of the applicable laws, (3) personal liability of workers under the laws, and (4) operational restrictions imposed by KSC.

(c) All vessel operations shall be conducted within the posted speed restrictions, and vessels shall be operated at minimum controllable speeds in all KSC waters. Shallow-water operations are prohibited.

(d) Training will be conducted by personnel of the U.S. Fish and Wildlife Service (USFWS). The contractor agrees to cooperate with the USFWS by allowing access at reasonable times and places (including shipboard) to USFWS personnel, and by making available such contractor personnel as are required to have the training. Arrangements for training will be made as follows:

(1) For personnel involved in tug, barge, or marine operations, through the Lockheed Space Operations Contractor, Transportation Coordination Center, Kennedy Space Center, Florida, telephone (407) 867–5330.

(2) For all other personnel, through the Systems Training and Employee Development Branch, Code PM-TNG, telephone (407) 867–2737.

(e) The contractor shall incorporate the provisions of this clause in applicable subcontracts (including vendor deliveries).

(End of clause)

1852.247–72 Advance notice of shipment.

As prescribed in 1847.305–70(a), insert the following clause:

ADVANCE NOTICE OF SHIPMENT (OCT 1988)

___ [Insert number of work days] work days prior to shipping item(s) _____ [Insert items to be shipped], the Contractor shall furnish the anticipated shipment date, bill of lading number (if applicable), and carrier identity to _____ [Insert individual(s) to receive notification] and to the Contracting Officer.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 14035, Mar. 25, 1997]

1852.247–73 Bills of Lading.

As prescribed in 1847.305–70(b), insert a clause substantially as follows:

BILLS OF LADING (JUN 2002)

The purpose of this clause is to define when a commercial bill of lading or a government bill of lading is to be used when shipments of deliverable items under this contract are f.o.b. origin.

(a) *Commercial Bills of Lading*. All domestic shipments shall be made via commercial bills of lading (CBLs). The Contractor shall prepay domestic transportation charges. The Government shall reimburse the Contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a statement as described below must be completed, signed by an authorized company representative, and attached to the invoice.

''I certify that the shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number: _____

Destination: _____''.

(b) *Government Bills of Lading.* (1) International (export) and domestic overseas shipments of items deliverable under this contract shall be made by Government bills of lading (GBLs). As used in this clause, ''domestic overseas'' means non-continental United States, i.e. Hawaii, Commonwealth of Puerto Rico, and possessions of the United States.

(2) At least 15 days before shipment, the Contractor shall request in writing GBLs from: _____ [Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]. If time is limited, requests may be by telephone: _____ [Insert appropriate telephone number]. Requests for GBLs shall include the following information.

(i) Item identification/ description.

(ii) Origin and destination.

(iii) Individual and total weights.

(iv) Dimensional Weight.

(v) Dimensions and total cubic footage.

(vi) Total number of pieces.

(vii) Total dollar value.

(viii) Other pertinent data.

(End of clause)

[67 FR 38908, June 6, 2002]

1852.249–72 Termination (utilities).

As prescribed in 1849.505–70, insert the following clause. The period of 30 days may be varied not to exceed 90 days.

TERMINATION (UTILITIES) (MAR 1989)

The Government, at its option, may terminate this contract by giving written notice not less than 30 days in advance of the termination's effective date.

(End of clause)

Subpart 1852.3—Provision and Clause Matrix

1852.300 Scope of subpart.

The matrix in this subpart contains a column for each principal type and/or purpose of contract. See the first page of the matrix for the key to column headings, the dollar threshold chart, and requirement symbols.

[57 FR 40856, Sept. 8, 1992]

1852.301 Solicitation provisions and contract clauses (Matrix).

PART 1853 [RESERVED]

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

PARTS 1872–1899 [RESERVED]

CHAPTER 19—BROADCASTING BOARD OF GOVERNORS

EDITORIAL NOTES: 1. For a waiver document affecting chapter 19, see 56 FR 22661, May 16, 1991.

2. For nomenclature changes affecting chapter 19, see 64 FR 54541, Oct. 7, 1999.

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SUBCHAPTER A—GENERAL

PART 1900 [RESERVED]

PART 1901—THE BROADCASTING BOARD OF GOVERNORS ACQUISITION REGULATION SYSTEM

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Subpart 1901.1—Purpose, Authority, Issuance

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1901.602–1 Authority.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13200, Apr. 3, 1985, unless otherwise noted.

1901.000 Scope of part.

This part describes the method by which the Broadcasting Board of Governors implements and supplements the Federal Acquisition Regulation and contains policies and procedures that implement and supplement Chapter 1 of the Federal Acquisition Regulation (48 CFR).

Subpart 1901.1—Purpose, Authority, Issuance

1901.101 Purpose.

This subpart establishes the Broadcasting Board of Governors Acquisition Regulation as Chapter 19 of the Federal Acquisition Regulations System (48 CFR chapter 19) and states the relationship of the IAAR to the Federal Acquisition Regulation (FAR), 48 CFR chapter 1.

1901.102 Authority.

The the Broadcasting Board of Governors Acquisition Regulation is prescribed by the Director of the Broadcasting Board of Governors pursuant to the authority of the Reorganization Plan No. 2 of 1977 and the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law.

1901.103 Applicability.

Except where a deviation is specifically authorized in accordance with subpart 1901.4 or otherwise authorized by law, the FAR and the IAAR govern all the Broadcasting Board of Governors acquisitions within the United States.

1901.104 Issuance.

1901.104–1 Publication and code arrangement.

(a) The IAAR is published in the FEDERAL REGISTER and, in cumulative form in the Code of Federal Regulations (CFR).

(b) The IAAR is issued as chapter 19 of title 48, CFR.

1901.104–2 Arrangement of regulations.

The IAAR uses the same numbering system and arrangement used in the FAR. Where the IAAR implements the FAR, it is numbered and captioned to correspond to the FAR. Where there is no corresponding material in the FAR, numbers beginning with 70 or higher are assigned to the IAAR supplementing part. Where the subject matter is the FAR requires no implementation, the IAAR contains no corresponding part.

Subpart 1901.4—Deviations From the FAR

1901.403 Individual deviations.

Deviations from the IAAR or the FAR in individual cases shall be authorized by the Board Procurement Executive or a designee unless FAR 1.405(e) is applicable. The request shall

cite the specific part of the IAAR or FAR from which it is desired to deviate; shall set forth the nature of the deviation(s); and shall give the reason for the action requested.

1901.404 Class deviations.

Class deviations affecting more than one contracting action shall be authorized only by the Board Procurement Executive, unless FAR 1.405(e) is applicable, and shall be subject to the limitations set forth in FAR 1.404. Requests shall include the same information as cited in 1901.403.

Subpart 1901.6—Contracting Authority and Responsibilities

1901.601 General.

The Director, Office of Contracts, is designated the Board Procurement Executive. The Board Procurement Executive is delegated the full delegable authority of the Director of this Board with respect to the acquisition of goods and services by contract and such other methods as may be prescribed in the FAR. The Board Procurement Executive is delegated overall responsibility by the Director for the Board's contracting activities.

1901.602 Contracting officers.

1901.602–1 Authority.

The Broadcasting Board of Governors Contracting Officers designated by name on Certificates of Appointment by the Board Procurement Executive are authorized to enter into, administer, and terminate contracts and make related determinations and findings, subject to all requirements and limitations set forth in the Certificate of Appointment. A list of the Broadcasting Board of Governors employees who have been appointed as Contracting Officers and the limits of their authority is available from the Policy and Procedures Staff, Office of Contracts.

PART 1902—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13202, Apr. 3, 1985, unless otherwise noted.

Subpart 1902.1—Definitions

1902.101 Definitions.

As used throughout this regulation, the following words and terms are used as defined in this subpart unless (a) the context in which they are used clearly requires a different meaning or (b) a different definition is prescribed for a particular part or portion of a part.

Board means the Broadcasting Board of Governors, acting through any of its duty authorized officials.

Board Procurement Executive means the Director, Office of Contracts.

AR/CO means Authorized Representative of the Contracting Officer (see 1942.202–70).

Contracting activity means the Office of Contracts, which has the responsibility to contract for the acquisition of supplies and services (including construction).

Head of the Board (also called *Board head*) means the Board Director or Deputy Director; and the term *authorized representative* means any person, persons or board (other than the contracting officer) authorized to act for the Head of the Board.

Purchasing Activity means an office with one or more Level I or Level II Small Purchases Contracting Officer(s) exercising limited redelegations of contracting officer authority.

BBG means the Broadcating Board of Governors.

PART 1903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

Sec.
1903.602 Exceptions.
1903.670 Contracts between the Broadcasting Board of Governors and former employees.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13202, Apr. 3, 1985, unless otherwise noted.

Subpart 1903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1903.602 Exceptions.

To avoid potential conflicts of interest or the appearance of preferential treatment, it is the Broadcasting Board of Governors policy not to award contracts, purchase orders, grants or cooperative agreements to Government employees or their family members or business concerns owned or controlled by Government employees or their family members. Exceptions to this policy must be approved by the Board Director or Board Procurement Executive and supported by written Findings and Determination. A contract with an employee for services may result in violation of the dual salary compensation statutes (5 U.S.C. 5533). Nothing in this paragraph is intended to render inapplicable the conflict of interest prohibition set out in 18 U.S.C. 208.

1903.670 Contracts between the Broadcasting Board of Governors and former employees.

To avoid conflicts of interest or the appearance of preferential treatment, purchase orders, contracts, grants or cooperative agreements with former employees of the Broadcasting Board of Governors, or with firms in which former employees or their family members are known to have controlling interest, may be entered into within two years following separation from employment only with the written approval of the Board Director. A written justification shall be made a part of the file. The justification must address the issue of conflict of interest and conclude that it does not exist; or that in spite of its existence, the Board's ability to meet its mission would be seriously harmed without the award.

PART 1904—ADMINISTRATIVE MATTERS

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13203, Apr. 3, 1985, unless otherwise noted.

Subpart 1904.70—Procurement Requests

1904.7001 General.

(a) Procurement requests will be prepared and submitted to the contracting office in accordance with Board procedures.

(b) Except in unusual circumstances, the contracting office will not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract award prior to the receipt of the approved procurement request certifying that funds are available when:

(1) Such action is necessary to meet critical program schedules;

(2) It has been established that program authority has been issued and that funds to cover the acquisition will be available prior to the date set for contract award or contract modification;

(3) A person at a level above the contracting officer authorizes such action prior to the issuance of the solicitation, and the contract file is properly documented; and

(4) The solicitation document clearly indicates that the award is subject to the availability of funds.

(c) The procurement request shall be assigned within the contracting office to an individual who, if not the contracting officer, will be responsible to the contracting officer for conducting the business aspects of the transaction. This individual shall review the request to ensure that it complies with the FAR and this Regulation and that the information contained in the request is in sufficient detail to prepare presolicitation and solicitation documents. The contracting officer, or other designated individual in the contracting office, shall discuss uncertain requirements or inconsistencies in the procurement request with the initiator of the request and obtain clarification prior to taking any further action.

SUBCHAPTER B—ACQUISITION PLANNING

PART 1909—CONTRACTOR QUALIFICATIONS

Subpart 1909.4—Debarment, Suspension, and Ineligibility

Sec.
1909.403 Definitions.
1909.404 Consolidated list of debarred, suspended, and ineligible contractors.
1909.406 Debarment, suspension, and ineligibility.
1909.406–3 Procedures.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13203, Apr. 3, 1985, unless otherwise noted.

Subpart 1909.4—Debarment, Suspension, and Ineligibility

1909.403 Definitions.

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

1909.404 Consolidated list of debarred, suspended, and ineligible contractors.

(a) The Policy and Procedures Staff, Office of Contracts, shall be responsible for the maintenance and distribution of the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors. It will be coordinated with the Solicitation Mailing List and appropriate notations will be made on both lists, when additions or deletions are necessary. Contracting Officers shall notify the Policy and Procedures Staff, Office of Contracts, of their distribution needs and shall ensure the list is used effectively.

(b) The Board Procurement Executive (or designee) is responsible for notifying GSA of the information required by FAR 9.404(b).

1909.406 Debarment, suspension, and ineligibility.

1909.406–3 Procedures.

(a) *Investigation and referral.* Any officer of the Board who becomes aware of circumstances which may serve as a basis for a debarment, suspension, or ineligibility shall report the circumstances by memorandum to the Board Procurement Executive for consideration of debarment, suspension or ineligibility action.

(b) *Decision-making process.* (1) Contractors shall be given the opportunity to submit, in person, in writing, or through a representative, information and arguments in opposition to a proposed debarment or suspension. All rebuttals shall be addressed to the Board Procurement Executive. However, if a response to the proposed debarment or suspension is not received by the Board Procurement Executive within 30 calendar days of receipt of the notice, the debarment or suspension shall become final.

(2) If a contractor, or a representative, desires to present information and arguments in person to the Board Procurement Executive, an oral presentation will be held within 20 calendar days of receipt of the request, unless a longer period of time is requested by the contractor. Hearings will be held before a three-person fact-finding board composed of one member each from the Office of General Counsel and Congressional Liaison, the Bureau of Management, and the Office of Contracts, other than the initiating officer. The fact-finding board shall deliver written findings to the Board Procurement Executive (together with a transcription of the proceedings, if made) within 10 calendar days after the hearing. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and determine whether a cause for debarment or suspension exists.

(c) *Debarring/suspending official's decision.* The debarring/suspending official's final decision shall be made in writing in accordance with FAR 9.406–3 and notice of the decision will be given

in accordance with FAR 9.406–3. A copy of the notice shall be given to the affected agency component.

PART 1910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

1910.004–70 Brand name products or equal.
1910.004–71 Limits on the use of brand name or equal purchase descriptions.
1910.004–72 Solicitations, brand name or equal descriptions.
1910.004–73 Offer evaluation and award, brand name or equal descriptions.
1910.004–74 Procedure for negotiated procurements and small purchases.
1910.011 Solicitation provisions and contract clauses.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13204, Apr. 3, 1985, unless otherwise noted.

1910.004–70 Brand name products or equal.

(a) *General.* Consistent with the policy stated in FAR 10.004(a)(2), the Broadcasting Board of Governors acquisitions will generally not be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances such an approach may be used as described below.

(b) *Citing brand name products.* Brand name or equal purchase descriptions shall cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an ''equal'' product, a reference to that brand name product should be included in the purchase description for later acquisitions. If a brand name product is no longer applicable, the reference thereto shall be deleted from subsequent purchase description.

(c) *Specifying essential characteristics.* (1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirements. (See 1910.004–73.) Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. Avoid specifying a characteristic (e.g., a specific dimension) of a brand name product unless it is essential to the Government's need. The contracting officer must be able to justify the requirement.

1910.004–71 Limits on the use of brand name or equal purchase descriptions.

(a) *General.* The use of brand name or equal purchase descriptions in solicitations is intended to promote competition by encouraging the offering of products that are equal in all material respects to brand name products cited in such descriptions. Identification by brand name does not indicate a preference for the products mentioned but indicates the quality and characteristics of products that will meet the Government's needs. Where a component of an item is described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the provision of 1952.210–70 would be impracticable, the requirement to include the entry described in 1910.004–72(a) shall not apply. If the provision is included in the solicitation for other reasons, there also shall be included in the solicitation a statement to identify either the component parts (described by brand name or equal descriptions) to which the provision applies or those to which it does not apply. This also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of an end item. Brand name or equal descriptions shall not be used to acquire a particular product under the guise of competitive acquisition to the exclusion of other products that would meet the actual needs.

(b) In small purchases within the open market limitations, brand name policies and procedures shall be applicable to the extent practicable.

(c) *Approval required.* A brand name or equal purchase description shall not

be used unless it has been approved at one level above the contracting officer.

1910.004–72 Solicitations, brand name or equal descriptions.

(a) An entry substantially as follows shall be prominently inserted in the item listing after each item or component part of an end item to which a brand name or equal purchase description applies.

Bidding on:
Manufacturer's Name: _____
Brand: _____
No.: _____

(b) Because bidders frequently overlook the requirements of the clause at 1952.210–70 ''Brand Name or Equal,'' the following note shall be inserted in the item listing after each brand name or equal item (or component part), or at the bottom of each page, listing several such items, or in a manner that may otherwise direct the offeror's attention to this clause.

Offerors offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to equality of the product(s) offered (see the provision ''Brand Name or Equal'' set forth in 1952.210–70 of the solicitation).

(c) If offeror samples are requested for brand name or equal acquisitions, the above notice shall not be included in the solicitation.

1910.004–73 Offer evaluation and award, brand name or equal descriptions.

An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In such cases, the contracting officer should resolicit the requirements, using a purchase description that sets forth the essential characteristics.

1910.004–74 Procedure for negotiated procurements and small purchases.

(a) The policies and procedures prescribed for sealed bid procurements shall be generally applicable to negotiated procurements.

(b) The clause set forth at 1952.210–70 may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in unusual and compelling urgency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that the offered products meet fully the salient characteristics requirements of the solicitation.

(c) In small purchases within open-market limitations, such policies and procedures shall be applicable to the extent practicable.

1910.011 Solicitation provisions and contract clauses.

The Contracting Officer shall include the provision at 1952.210–70, Brand Name or Equal, in solicitations for which brand name or equal purchase is used.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1913—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Sec.

Subpart 1913.5—Purchase Orders

1913.505 Purchase order and related forms.
1913.505–2 Board order forms in lieu of Optional and Standard Forms.

AUTHORITY: 40 U.S.C. 486(c).

Subpart 1913.5—Purchase Orders

1913.505 Purchase order and related forms.

1913.505–2 Board order forms in lieu of Optional and Standard Forms.

(a) Optional Forms 347 and 348 shall be used as prescribed in FAR 13.505 unless an equivalent form has been authorized for use by the Board Procurement Executive (or Designee). Exceptions may be granted, on a case-by-case basis, in order to accommodate computer-generated purchase order forms. Exception approval for over printing (FAR 53.104) is not needed.

(b) The Broadcasting Board of Governors Form IA–44 (see 1953.370–44) is authorized for use when obtaining nonpersonal services on an intermittent basis for such services as script writers, translators, narrators, etc.

[50 FR 13205, Apr. 3, 1985]

PART 1915—CONTRACTING BY NEGOTIATION

Subpart 1915.1—General Requirements for Negotiation

Sec.

1915.106 Contract clauses.
1915.106–70 Key personnel and facilities.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13205, Apr. 3, 1985, unless otherwise noted.

Subpart 1915.1—General Requirements for Negotiation

1915.106 Contract clauses.

1915.106–70 Key personnel and facilities.

Whenever contractor selection has been substantially predicated on the contractor's possession of special capabilities (i.e., personnel and/or facilities) the contracting officer shall include the clause at 1952.215–70 in the awarded contract.

PART 1917—SPECIAL CONTRACTING METHODS

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13205, Apr. 3, 1985, unless otherwise noted.

Subpart 1917.1—Multiyear Contracting

1917.102 Policy.

When consistent with 22 U.S.C. 1472(b), the Head of the Board may approve multiyear contracts up to five years.

SUBCHAPTERS D–F [RESERVED]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1942—CONTRACT ADMINISTRATION

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13212, Apr. 3, 1985, unless otherwise noted.

Subpart 1942.2—Assignment of Contract Administration

1942.202–70 Authorized Representative of the Contracting Officer (AR/CO).

The Contracting Officer may designate an appropriately qualified Government employee to act as the Authorized Representative of the Contracting Officer (AR/CO). Such designation shall apply to a single contract, must be in writing, and shall define the scope and limitations of the AR/CO's authority. The instrument designating an AR/CO shall not contain authority to sign or agree to any contract or major modification to a contract. Contractual commitments shall be made only by a duly certified contracting officer. The Contracting Officer shall insert the clause at 1952.242–70, Authorized Representative of the Contracting Officer, in solicitations and contracts when an individual is to be selected and designated by the Contracting Officer to perform administration of a given contract(s).

PART 1946—QUALITY ASSURANCE

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13212, Apr. 3, 1985, unless otherwise noted.

Subpart 1946.7—Warranties

1946.704 Authority for use of warranties.

(a) The procurement request initiator is responsible for preparing a written recommendation for those purchases deemed to be appropriate for application of warranty provisions. The recommendation shall state why a warranty is appropriate by specifically addressing the criteria set forth in FAR 46.703. The recommendation shall also identify the specific parts, subassemblies, assemblies, systems, or contract line items to which a warranty should apply.

(b) Prior to solicitation of the requirement, the contracting officer shall make a written determination when a warranty provision is to be included.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
1952.000 Scope of part.

Subpart 1952.1—Instructions for Using Provisions and Clauses

1952.102–2 Incorporation in full text.
1952.104 Procedures for modifying and completing provisions and clauses.

Subpart 1952.2—Texts of Provisions and Clauses

1952.215–70 Key personnel and facilities.
1952.227–76 Government rights (unlimited).
1952.227–77 Rights in shop drawings.
1952.227–78 Disposition of prints and videotape recordings.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13212, Apr. 3, 1985, unless otherwise noted.

1952.000 Scope of part.

This part implements and supplements FAR part 52 which sets forth solicitation provisions and contract clauses for use in the acquisition of personal property and nonpersonal services (including construction).

Subpart 1952.1—Instructions for Using Provisions and Clauses

1952.102–2 Incorporation in full text.

All IAAR provisions and clauses shall be incorporated in solicitations and/or contracts in full text.

1952.104 Procedures for modifying and completing provisions and clauses.

IAAR provisions and clauses shall not be modified (see FAR 1952.101(a) unless authorized by the Director, Office of Contracts, and when so authorized, contracting officers must comply with the procedures in FAR 1952.104.

Subpart 1952.2—Texts of Provisions and Clauses

1952.215–70 Key personnel and facilities.

As prescribed in 1915.106–70 insert the following clause in appropriate contracts:

KEY PERSONNEL AND FACILITIES (FEB 1985)

The personnel and/or facilities listed below (or as specified in the Schedule of this contract) are considered essential to the work being performed hereunder. Prior to removing, replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract. No diversion shall be made by the Contractor without the written consent of the Contracting Officer; provided, that the Contracting Officer may ratify in writing the change and such ratification shall constitute the consent of the Contracting Officer required by this clause. The personnel and/or facilities listed below (or as specified in the Schedule of this contract) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to either add or delete personnel and/or facilities, as appropriate.

(End of clause)

1952.227–76 Government rights (unlimited).

As prescribed in 1927.405(g), insert the following clause:

GOVERNMENT RIGHTS (UNLIMITED) (FEB 1985)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyrights laws. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

1952.227–77 Rights in shop drawings.

As prescribed in 1927.405(h), insert the following clause:

RIGHTS IN SHOP DRAWINGS (FEB 1985)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

1952.227–78 Disposition of prints and videotape recordings.

As prescribed in 1927.405(j) insert the following clause in License Agreements:

DISPOSITION OF PRINTS AND VIDEOTAPE RECORDINGS (FEB 1985)

If the Board elects to discontinue distribution and exhibition hereunder, or upon expiration of the term of this License Agreement, the Board will destroy all prints and erase all videotape recordings of the Film. A certificate(s) attesting to such destruction and/or erasure will be furnished the Licensor upon its written request.

(End of clause)

PART 1953—FORMS

EDITORIAL NOTE: IAAR forms referenced in this subpart do not appear in the Code of Federal Regulations. The list of forms following 1953.370 is set forth for the convenience of the user. Forms may be obtained by writing: Office of Contracts, The Broadcasting Board of Governors, Washington, DC 20547.

Subpart 1953.3—Illustrations of Forms

Sec.
1953.300 Scope of subpart.
1953.370 The Broadcasting Board of Governors forms.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13224, Apr. 3, 1985, unless otherwise noted.

Subpart 1953.3—Illustrations of Forms

1953.300 Scope of subpart.

This subpart contains illustrations of some forms referenced in this IAAR.

1953.370 The Broadcasting Board of Governors forms.

This section contains illustrations of The Broadcasting Board of Governors forms references in this IAAR.

PARTS 1954–1999 [RESERVED]

LIST OF IAAR FORMS

1953.370–21 The Broadcasting Board of Governors Form IA–21, Abstract of Quotations.
1953.370–44 The Broadcasting Board of Governors Form IA–44, Requisition-Purchase—Order-Invoice for Professional Services.

CHAPTER 20—NUCLEAR REGULATORY COMMISSION

SUBCHAPTER A—GENERAL

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SUBCHAPTER A—GENERAL

PART 2000 [RESERVED]

PART 2001—NUCLEAR REGULATORY COMMISSION ACQUISITION REGULATION SYSTEM

Subpart 2001.1—Purpose, Authority, Issuance

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2001.101 Purpose.
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2001.402 Policy.
2001.403 Individual deviations.
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Subpart 2001.6—Contracting Authority and Responsibilities

2001.600–70 Scope of subpart.
2001.601 General.
2001.602–3 Ratification of unauthorized commitments.
2001.603 Selection, appointment, and termination of appointment.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

SOURCE: 64 FR 49324, Sept. 10, 1999, unless otherwise noted.

Subpart 2001.1—Purpose, Authority, Issuance

2001.101 Purpose.

This subpart establishes Chapter 20, the Nuclear Regulatory Commission Acquisition Regulation (NRCAR), and provides for the codification and publication of uniform policies and procedures for acquisitions by the NRC. The NRCAR is not, by itself, a complete document. It must be used in conjunction with the Federal Acquisition Regulation (FAR) (48 CFR chapter 1).

2001.102 Authority.

The NRCAR and the amendments to it are issued by the Senior Procurement Executive under a delegation from the Executive Director for Operations dated May 16, 1997, in accordance with the authority of the Atomic Energy Act of 1954, as amended (42. U.S.C. 161), the Energy Reorganization Act of 1974 (42 U.S.C. 5841, 5872), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), as amended, FAR subpart 1.3, and other applicable law.

2001.103 Applicability.

The FAR and NRCAR apply to all NRC acquisitions of supplies and services which obligate appropriated funds, unless exempted by Sections 31 and 161 of the Atomic Energy Act of 1954 as amended, and Section 205 of the Energy Reorganization Act of 1974 as amended. For procurements made from non-appropriated funds, the Director, Division of Contracts and Property Management, shall determine the rules and procedures that apply.

2001.104 Issuance.

2001.104–1 Publication and code arrangement.

(a) The NRCAR and its subsequent changes are:

(1) Published in the daily issue of the FEDERAL REGISTER; and

(2) Codified in the Code of Federal Regulations (CFR).

(b) The NRCAR is issued as 48 CFR chapter 20.

2001.104–2 Arrangement of the regulations.

(a) *General*. Chapter 20 is divided into parts, subparts, sections, subsections, paragraphs, and further subdivisions as necessary.

(b) *Numbering*. The numbering system and part, subpart and section titles used in this Chapter conform with those used in the FAR as follows:

(1) Where Chapter 20 implements the FAR or supplements a parallel part, subpart, section, subsection, or paragraph of the FAR, that implementation or supplementation is numbered and captioned to the FAR part, subpart, section, or subsection being implemented or supplemented, except that the implementation or supplementation is preceded with a 20 or 200 so that there will always be four numbers to the left of the decimal. For example, NRC's implementation of FAR 1.104–1 is shown as 2001.104–1 and the NRC's implementation of FAR 24.1 is shown as 2024.1.

(2) When the NRC supplements material contained in the FAR, it is given a unique number containing the numerals ''70'' or higher. The rest of the number parallels the FAR part, subpart, section, subsection, or paragraph it is supplementing. For example, Section 170A of the Atomic Energy Act of 1954, as amended, requires a more comprehensive organizational conflict of interest review for NRC than is contemplated by FAR 9.5. This supplementary material is identified as 2009.570.

(3) Where material in the FAR requires no implementation or supplementation, there is no corresponding numbering in the NRCAR. Therefore, there may be gaps in the NRCAR sequence of numbers where the FAR requires no further implementation.

(c) *Citation*. The NRCAR will be cited in accordance with Office of the Federal Register standards approved for the FAR. Thus, this section when referred to in the NRCAR is cited as 2001.104–2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as ''48 CFR 2001.104–2(c).'' Any section of the NRCAR may be formally identified by the section number, e.g., ''NRCAR 2001.104–2.'' In the NRCAR, any reference to the FAR will be indicated by ''FAR'' followed by the section number, for example FAR 1–104.

2001.104–3 Copies.

Copies of the NRCAR in FEDERAL REGISTER and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

2001.105 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The NRC 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. OMB has approved the information collection requirements contained in this part under control number 3150–0169.

(b) The information collection requirements contained in this part appear in 2009.570–3, 2009.570–5, 2009.570–8, 2014.201–670, 2027.305–3, 2042.570–1, 2042.803, 2045.371, 2052.204–70, 2052.204–71, 2052.209–70, 2052.209–71, 2052.209–72, 2052.211–70, 2052.211–71, 2052.211–72, 2052.211–72 Alternate 1, 2052.214–71, 2052.214–72, 2052.214–74, 2052.215–70, 2052.215–71, 2052.215–74, 2052.215–75, 2052.215–75 Alternate 1, 2052.215–75 Alternate 2, 2052.215–78, 2052.216–72, 2052.227–70, 2052.235–70, 2052.235–71, 2052.242–70, and 2052.242–71.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and control numbers under which they are approved are as follows:

(1) In 2052.215–77(a) and 2052.215–78(b), NRC Form 445 is approved under control number 3150–0193.

(2) [Reserved]

Subpart 2001.3—Agency Acquisition Regulations

2001.301 Policy.

Policy, procedures, and guidance of an internal nature will be promulgated through internal NRC issuances such as Management Directives or Division of Contracts and Property Management Instructions.

2001.303 Public participation.

FAR 1.301 and section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b) require rulemaking for substantive acquisition rules, but allow discretion in the matter for other than significant issues meeting the stated criteria. Accordingly, the NRCAR has been promulgated and may be revised from time to time in accordance with FAR 1.301. This procedure for significant subject matter generally involves issuing a notice of proposed rulemaking that invites public comment, review and analysis of comments received, and publication of a final rule. The final rule includes a discussion of the public comments received and describes any changes made as a result of the comments.

Subpart 2001.4—Deviations From the FAR and the NRCAR

2001.402 Policy.

(a) Deviations from the provisions of the FAR or NRCAR may be granted as specified in this subpart when necessary to meet the specific needs of the requesting office. The development and testing of new techniques and methods of acquisition should not be discouraged simply because the action would require a FAR or NRCAR deviation.

(b) Requests for authority to deviate from the provisions of the FAR or the NRCAR must be signed by the requesting office and submitted to the Director, Division of Contracts and Property Management, in writing, as far in advance as possible. Each request for deviation must contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR or NRCAR from which a deviation is requested;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contract affected;

(4) A description of the intended effect of the deviation;

(5) A statement of the period of time for which the deviation is needed; and

(6) Any pertinent background information which will contribute to a full understanding of the desired deviation.

2001.403 Individual deviations.

In individual cases, deviations from either the FAR or the NRCAR will be authorized only when essential to effect only one contracting action or where special circumstances make the deviations clearly in the best interest of the Government. Individual deviations must be authorized in advance by the Director, Division of Contracts and Property Management.

2001.404 Class deviations.

Class deviations affect more than one contracting action. Where deviations from the FAR or NRCAR are considered necessary for classes of contracts, requests for authority to deviate must be submitted in writing to the Director, Division of Contracts and Property Management, who will consider the submission jointly with the Chairperson of the Civilian Agency Acquisition Council, as appropriate.

Subpart 2001.6—Contracting Authority and Responsibilities

2001.600–70 Scope of subpart.

This subpart deals with the placement of contracting authority and responsibility within the agency, the selection and designation of contracting officers, and the authority of contracting officers.

2001.601 General.

(a) Contracting authority vests in the Chairman. The Chairman has delegated this authority to the Executive Director for Operations (EDO). The EDO has delegated this authority to the Deputy Executive Director for Management Services (DEDM). The DEDM has delegated this authority to the Director, Office of Administration (ADM). The Director, ADM, has delegated the authority to the Director, Division of Contracts and Property Management (DCPM), who, in turn, makes contracting officer appointments within Headquarters and Regional Offices. All of these delegations

are formal written delegations containing dollar limitations and conditions.

(b) The Director, Division of Contracts Division of Contracts and Property Management, establishes contracting policy throughout the agency; monitors the overall effectiveness and efficiency of the agency's contracting office; establishes controls to assure compliance with laws, regulations, and procedures; and delegates contracting officer authority.

2001.602–3 Ratification of unauthorized commitments.

(a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. Any unauthorized commitment may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the NRCAR, and good acquisition practice. Certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met under an unauthorized commitment; for example, the certification of the availability of funds, justification for other than full and open competition, competition of sources, determination of contractor responsibility, certification of current pricing data, price/cost analysis, administrative approvals, and negotiation of appropriate contract clauses.

(b) The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may later be ratified. To be effective, the ratification must be in the form of a written procurement document clearly stating that ratification of a previously unauthorized commitment is intended. All ratifications of procurement actions valued at $2,500 or less may be approved by the appropriate regional administrator or Headquarters contracting officer. For any such action, all other terms of subpart 2001.6 are applicable. All ratification actions exceeding $2,500 shall be approved by the Competition Advocate.

(c) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority must be processed as follows:

(1) The Designating Official that is responsible for the office request shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to:

(i) A written statement consistent with the complexity and size of the action as to why the contracting office was not used including the name of the employee who made the commitment;

(ii) A statement as to why the proposed contractor was selected;

(iii) A list of other sources considered;

(iv) A description of work performed, or to be performed, or products to be furnished;

(v) The estimated or agreed upon contract price;

(vi) A certification of the appropriated funds available;

(vii) A description of how unauthorized commitments in similar circumstances will be avoided in the future.

(2) The contracting officer shall review the written statement of facts for a determination of approval of all actions valued at $2,500 or less. For actions greater than $2,500, the contracting officer shall forward the written statement of facts to the Competition Advocate through the Director, Division of Contracts and Property Management with any comments or information that should be considered in evaluating the request for ratification.

(3) The NRC legal advisor may be asked for an opinion, advice, or concurrence if there is concern regarding the propriety of the funding source, appropriateness of the expense, or when some other legal issue is involved.

2001.603 Selection, appointment, and termination of appointment.

The Director, Division of Contracts and Property Management, is authorized by the Director, Office of Administration, to select and appoint contracting officers and to terminate their appointment as prescribed in FAR

1.603. Delegations of contracting officer authority are issued by memorandum which includes a clear statement of the delegated authority, including responsibilities and limitations in addition to the ''Certificate of Appointment'', SF 1402. The Director, Division of Contracts and Property Management, may delegate micro-purchase authority in accordance with agency procedures. This delegation may be accomplished by written memorandum. (ref. FAR 1.603–3(b))

PART 2002—DEFINITIONS

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

SOURCE: 64 FR 49326, Sept. 10, 1999, unless otherwise noted.

Subpart 2002.1—Definitions

2002.100 Definitions.

Agency means the Nuclear Regulatory Commission (NRC).

Agency Head or *Head of the Agency* means the NRC Executive Director for Operations, for the purposes specified in the regulations in this chapter and the FAR. This delegation does not extend to internal NRC requirements such as clearance levels and Commission papers which specify higher levels of authority.

Commission means the NRC Commission of five members, or a quorum thereof, sitting as a body, as provided by Section 201 of the Energy Reorganization Act of 1974 (42 U.S.C. 5841).

Competition Advocate means the individual appointed as such by the Agency Head as required by Public Law 98–369. The Director, Division of Contracts and Property Management, has been appointed the Competition Advocate for the NRC.

Head of the Contracting Activity means the Director, Division of Contracts and Property Management.

Senior Procurement Executive means the individual appointed as such by the Agency Head pursuant to Executive Order 12352. The Deputy Executive Director for Management Services, has been appointed the NRC Senior Procurement Executive.

Simplified acquisitions means those acquisitions conducted using the methods, policies, and procedures of FAR part 13 for making purchases of supplies or services.

Task and Delivery Order Ombudsman means the Director, Division of Contracts and Property Management, or designee pursuant to section 1004(a) of Pub. L. 103–355, the Federal Acquisition Streamlining Act.

PART 2003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2003.1—Safeguards

Sec.
2003.101–3 Agency regulations.

Subpart 2003.2—Contractor Gratuities to Government Personnel

2003.203 Reporting suspected violations of the gratuities clause.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

SOURCE: 64 FR 49326, Sept. 10, 1999, unless otherwise noted.

Subpart 2003.1—Safeguards

2003.101–3 Agency regulations.

Standards of conduct for Federal employees are published in 5 CFR parts 2635 and 5801. Requirements for financial disclosure are published in 5 CFR part 2634.

Subpart 2003.2—Contractor Gratuities to Government Personnel

2003.203 Reporting suspected violations of the gratuities clause.

(a) Suspected violations of the ''Gratuities'' clause, FAR 52.203.3, must be reported orally or in writing directly to the NRC Office of the Inspector General. A report must include all facts and circumstances related to the case. Refer to 5 CFR part 2635 for an explanation regarding what is prohibited and what is permitted.

(b) When appropriate, discussions with the contracting officer or a higher

procurement official, procurement policy staff, and the procurement legal advisor before filing a report are encouraged.

PART 2004—ADMINISTRATIVE MATTERS

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

SOURCE: 64 FR 49327, Sept. 10, 1999, unless otherwise noted.

2004.404 Contract clauses.

(a) The contracting officer shall insert the clause at 2052.204–70 Security, in all solicitations and contracts under which the contractor may have access to, or contact with, classified information, including National Security information, restricted data, formerly restricted data, and other classified data.

(b) The contracting officer shall insert the clause 2052.204–71 Site Access Badge Requirements, in all solicitations and contracts under which the contractor will require access to Government facilities. The clause may be altered to reflect any special conditions to be applied to foreign nationals.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2005—PUBLICIZING CONTRACT ACTIONS

Subpart 2005.5—Paid Advertisements

Sec.
2005.502 Authority.

AUTHORITY: (42 U.S.C. 2201); 42 U.S.C. 5841; 41 U.S.C. 401 *et seq.*

SOURCE: 64 FR 49327, Sept. 10, 1999, unless otherwise noted.

Subpart 2005.5—Paid Advertisements

2005.502 Authority.

Before placing paid advertisements in newspapers and trade journals to publicize contract actions, written authority must be obtained from the Director, Division of Contracts and Property Management, for Headquarters activities, or the Director, Division of Resource Management and Administration, within each regional office for a regional procurement.

PART 2009—CONTRACTOR QUALIFICATIONS

Subpart 2009.1—Responsible Prospective Contractors

Sec.
2009.100 NRC policy.
2009.105–70 Contract provisions.

Subpart 2009.4—Debarment, Suspension, and Ineligibility

2009.403 Definitions.
2009.404 Consolidated lists of parties excluded from Federal procurement or nonprocurement programs.
2009.405 Effect of listing.
2009.405–1 Continuation of current contracts.
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2009.406 Debarment.
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2009.407 Suspension.
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Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.
2009.570 NRC organizational conflicts of interest.
2009.570–1 Scope of policy.
2009.570–2 Definitions.
2009.570–3 Criteria for recognizing contractor organizational conflicts of interest.
2009.570–4 Representation.
2009.570–5 Contract clauses.
2009.570–6 Evaluation, findings, and contract award.
2009.570–7 Conflicts identified after award.
2009.570–8 Subcontracts.
2009.570–9 Waiver.
2009.570–10 Remedies.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C 418(b).

SOURCE: 64 FR 49327, Sept. 10, 1999, unless otherwise noted.

Subpart 2009.1—Responsible Prospective Contractors

2009.100 NRC policy.

(a) It is NRC policy that only competitively awarded contracts shall be placed with an individual who was employed by the NRC within two years from the date of the Request for Procurement Action. This policy also applies to:

(1) The noncompetitive award of contracts to organizations where former NRC employees have dominant ownership interests in the organization, such as partners or majority stockholders;

(2) The noncompetitive award of contracts to organizations where former NRC employees have dominant management interests, such as principal officers, or where the organization is predominantly staffed by former NRC employees; and

(3) The noncompetitive award of contracts, task orders or other NRC work assignments where the particular assignment is to be performed by designated former NRC employees, including principal investigators, key personnel, and others who will perform more than a nominal amount of the work in question.

(b) The following procurement actions are considered noncompetitive for the purposes of this policy:

(1) Contracts awarded noncompetitively under the Small Business Administration's 8(a) Program;

(2) Individual task orders if the former employee was not identified as ''key personnel'' in a proposal which was evaluated under competitive procedures;

(3) Unsolicited proposals;

(4) Subcontracts that require review for the purpose of granting consent under NRC prime contracts.

(c) The term *NRC employee* includes special Government employees performing services for NRC as experts, advisors, consultants, or members of advisory committees, if—

(1) The contract arises directly out of the individual's activity as a special employee;

(2) The individual is in a position to influence the award of the contract; or

(3) The Contracting Officer determines that another conflict of interest exists.

(d) A justification explaining why it is in the best interest of the Government to contract with an individual or firm described in paragraphs (a) and (b) of this section on a noncompetitive basis may be approved by the Senior Procurement Executive after consulting with the Executive Director for Operations. This is in addition to any justification and approvals which may be required by the FAR for use of other than full and open competition.

(e) Nothing in this policy statement relieves former employees from obligations prescribed by law, such as 18 U.S.C. 207, Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches.

2009.105–70 Contract provisions.

The contracting officer shall insert the following provisions in all solicitations:

(a) Section 2052.209–70 Current/Former Agency Employee Involvement.

Subpart 2009.4—Debarment, Suspension, and Ineligibility

2009.403 Definitions.

As used in 2009.4:

Debarring official means the Senior Procurement Executive.

Suspending official means the Senior Procurement Executive.

2009.404 Consolidated list of parties excluded from Federal procurement or non-procurement programs.

The contracting officer responsible for the contract affected by the debarment or suspension shall perform the actions required by FAR 9.404(c) (1) through (6).

2009.405 Effect of listing.

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The Senior Procurement Executive is authorized to make the determinations under FAR 9.405. Requests for these determinations must be submitted from the Head of the Contracting Activity, through the Director, Office of Administration, to the Senior Procurement Executive.

2009.405–1 Continuation of current contracts.

The Head of the Contracting Activity is authorized to make the determination to continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment in accordance with FAR 9.405–1.

2009.405–2 Restrictions on subcontracting.

The Head of the Contracting Activity is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405–2.

2009.406 Debarment.

2009.406–3 Procedures.

(a) *Investigation and referral.* (1) When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for

debarment, the contracting officer must first submit a complete statement of facts (including a copy of any criminal indictments, if applicable) and a recommendation for action to the Head of the Contracting Activity. If the contracting officer's statement of facts indicates misconduct on the part of the contractor in regard to an NRC contract, the Head of the Contracting Activity will refer the matter of misconduct to the Inspector General to determine if an investigation is required prior to referring the case to the debarring official.

(2) To the extent the Head of the Contracting Activity believes that sufficient grounds for debarment exist, independent of any pending investigation by the Inspector General, the Head of the Contracting Activity shall immediately forward the case, without reference to any pending investigation, and a recommendation for action to the Senior Procurement Executive for review. In such circumstances, the Head of the Contracting Activity will take no additional action in regard to a specific matter of misconduct referred to the Inspector General prior to consulting with the Inspector General.

(b) *Decision-making process*. If, after reviewing the recommendations and consulting with the Office of the General Counsel and, if appropriate, the Office of the Inspector General, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406–3(c) and notify the Head of the Contracting Activity of the action taken. If the contractor fails to submit a timely written response within 30 days after receipt of the notice in accordance with FAR 9.406–3(c)(4), the debarring official may notify the contractor in accordance with FAR 9.406–3(d) that the contractor is debarred.

(c) *Fact-finding proceedings*. For actions listed under FAR 9.406–3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned and no later than 30 days after the contractor received the notice, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings must be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment.

2009.407 Suspension.

2009.407–3 Procedures.

(a) *Investigation and referral*. (1) When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the contracting officer must first submit a complete statement of facts (including a copy of any criminal indictments, if applicable) and a recommendation for action to the Head of the Contracting Activity. If the contracting officer's statement of facts indicates misconduct on the part of the contractor in regard to an NRC contract, the Head of the Contracting Activity will refer the matter of misconduct to the Inspector General to determine if an investigation is required prior to referring the case to the suspension official.

(2) To the extent the Head of the Contracting Activity believes that sufficient grounds for debarment exist, independent of any pending investigation by the Inspector General, the Head of the Contracting Activity shall immediately forward the case, without reference to any pending investigation, and a recommendation for action to the Senior Procurement Executive for review. In such circumstances, the Head of the Contracting Activity will take no additional action in regard to a specific matter of misconduct referred to the Inspector General prior to consulting with the Inspector General.

(b) *Decision-making process*. If, after reviewing the recommendations and consulting with the Office of the General Counsel, and if appropriate, the Office of the Inspector General, the suspending official determines suspension is justified, the suspending official shall initiate the proposed suspension in accordance with FAR 9.407–3(b)(2). The contractor shall be given the opportunity to appear at an informal

hearing, similar in nature to the hearing for debarments as discussed in FAR 9.406–3(b)(2). If the contractor fails to submit a timely written response within 30 days after receipt of the notice in accordance with FAR 9.407–3(c)(5), the suspending official may notify the contractor in accordance with FAR 9.407–3(d) that the contractor is suspended.

2009.470 Appeals.

A debarred or suspended contractor may appeal the debarring/suspending official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the Executive Director for Operations. A copy of the notice of appeal must be furnished to the debarring/suspending official.

Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.

In accordance with 42 U.S.C. 2210a., NRC acquisitions are processed in accordance with 2009.570, which takes precedence over FAR 9.5 with respect to organizational conflicts of interest. Where non-conflicting guidance appears in FAR 9.5, that guidance must be followed.

2009.570 NRC organizational conflicts of interest.

2009.570–1 Scope of policy.

(a) It is the policy of NRC to avoid, eliminate, or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all prospective contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by the NRC) which may give rise to actual or potential conflicts of interest in the event of contract award.

(b) Contractor conflict of interest determinations cannot be made automatically or routinely. The application of sound judgment on virtually a case-by-case basis is necessary if the policy is to be applied to satisfy the overall public interest. It is not possible to prescribe in advance a specific method or set of criteria which would serve to identify and resolve all of the contractor conflict of interest situations that might arise. However, examples are provided in the regulations in this chapter to guide application of this policy guidance. The ultimate test is as follows: Might the contractor, if awarded the contract, be placed in a position where its judgment may be biased, or where it may have an unfair competitive advantage?

(c) The conflict of interest rule contained in this subpart applies to contractors and offerors only. Individuals or firms who have other relationships with the NRC (e.g., parties to a licensing proceeding) are not covered by the regulations in this chapter. This rule does not apply to the acquisition of consulting services through the personnel appointment process. NRC agreements with other Govern ment agencies, international organizations, or state, local, or foreign Governments. Separate procedures for avoiding conflicts of interest will be employed in these agreements, as appropriate.

2009.570–2 Definitions.

Affiliates means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

Contract means any contractual agreement or other arrangement with the NRC except as provided in 2009.570–1(c).

Contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, affiliates thereof, or their successors in interest, including their chief executives, directors, key personnel (identified in the contract), proposed consultants or subcontractors, which are a party to a contract with the NRC.

Evaluation activities means any effort involving the appraisal of a technology, process, product, or policy.

Offeror or *prospective contractor* means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, or their affiliates or successors in interest, including their chief executives, directors, key personnel, proposed consultants, or subcontractors, submitting a bid or

proposal, solicited or unsolicited, to the NRC to obtain a contract.

Organizational conflicts of interest means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract which:

(1) May diminish its capacity to give impartial, technically sound, objective assistance and advice, or may otherwise result in a biased work product; or

(2) May result in its being given an unfair competitive advantage.

Potential conflict of interest means that a factual situation exists that suggests that an actual conflict of interest may arise from award of a proposed contract. The term *potential conflict of interest* is used to signify those situations that—

(1) Merit investigation before contract award to ascertain whether award would give rise to an actual conflict; or

(2) Must be reported to the contracting officer for investigation if they arise during contract performance.

Research means any scientific or technical work involving theoretical analysis, exploration, or experimentation.

Subcontractor means any subcontractor of any tier who performs work under a contract with the NRC except subcontracts for supplies and subcontracts in amounts not exceeding $10,000.

Technical consulting and management support services means internal assistance to a component of the NRC in the formulation or administration of its programs, projects, or policies which normally require that the contractor be given access to proprietary information or to information that has not been made available to the public. These services typically include assistance in the preparation of program plans, preliminary designs, specifications, or statements of work.

2009.570–3 Criteria for recognizing contractor organizational conflicts of interest.

(a) *General.* (1) Two questions will be asked in determining whether actual or potential organizational conflicts of interest exist:

(i) Are there conflicting roles which might bias an offeror's or contractor's judgment in relation to its work for the NRC?

(ii) May the offeror or contractor be given an unfair competitive advantage based on the performance of the contract?

(2) NRC's ultimate determination that organizational conflicts of interest exist will be made in light of common sense and good business judgment based upon the relevant facts. While it is difficult to identify and to prescribe in advance a specific method for avoiding all of the various situations or relationships that might involve potential organizational conflicts of interest, NRC personnel will pay particular attention to proposed contractual requirements that call for the rendering of advice, consultation or evaluation activities, or similar activities that directly lay the groundwork for the NRC's decisions on regulatory activities, future procurements, and research programs. Any work performed at an applicant or licensee site will also be closely scrutinized by the NRC staff.

(b) *Situations or relationships.* The following situations or relationships may give rise to organizational conflicts of interest:

(1) The offeror or contractor shall disclose information that may give rise to organizational conflicts of interest under the following circumstances. The information may include the scope of work or specification for the requirement being performed, the period of performance, and the name and telephone number for a point of contact at the organization knowledgeable about the commercial contract.

(i) Where the offeror or contractor provides advice and recommendations to the NRC in the same technical area where it is also providing consulting assistance to any organization regulated by the NRC.

(ii) Where the offeror or contractor provides advice to the NRC on the same or similar matter on which it is also providing assistance to any organization regulated by the NRC.

(iii) Where the offeror or contractor evaluates its own products or services,

or has been substantially involved in the development or marketing of the products or services of another entity.

(iv) Where the award of a contract would result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC, or would result in an unfair competitive advantage for the offeror or contractor.

(v) Where the offeror or contractor solicits or performs work at an applicant or licensee site while performing work in the same technical area for the NRC at the same site.

(2) The contracting officer may request specific information from an offeror or contractor or may require special contract clauses such as provided in 2009.570–5(b) in the following circumstances:

(i) Where the offeror or contractor prepares specifications that are to be used in competitive procurements of products or services covered by the specifications.

(ii) Where the offeror or contractor prepares plans for specific approaches or methodologies that are to be incorporated into competitive procurements using the approaches or methodologies.

(iii) Where the offeror or contractor is granted access to information not available to the public concerning NRC plans, policies, or programs that could form the basis for a later procurement action.

(iv) Where the offeror or contractor is granted access to proprietary information of its competitors.

(v) Where the award of a contract might result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or might result in an unfair competitive advantage for the offeror or contractor.

(c) *Policy application guidance.* The following examples are illustrative only and are not intended to identify and resolve all contractor organizational conflict of interest situations.

(1)(i) *Example.* The ABC Corp., in response to a Request For Proposal (RFP), proposes to undertake certain analyses of a reactor component as called for in the RFP. The ABC Corp. is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, the ABC Corp. advises that it is currently performing similar analyses for the reactor manufacturer.

(ii) *Guidance.* An NRC contract for that particular work normally would not be awarded to the ABC Corp. because the company would be placed in a position in which its judgment could be biased in relationship to its work for the NRC. Because there are other well-qualified companies available, there would be no reason for considering a waiver of the policy.

(2)(i) *Example.* The ABC Corp., in response to an RFP, proposes to perform certain analyses of a reactor component that is unique to one type of advanced reactor. As is the case with other technically qualified companies responding to the RFP, the ABC Corp. is performing various projects for several different utility clients. None of the ABC Corp. projects have any relationship to the work called for in the RFP. Based on the NRC evaluation, the ABC Corp. is considered to be the best qualified company to perform the work outlined in the RFP.

(ii) *Guidance.* An NRC contract normally could be awarded to the ABC Corp. because no conflict of interest exists which could motivate bias with respect to the work. An appropriate clause would be included in the contract to preclude the ABC Corp. from subsequently contracting for work with the private sector that could create a conflict during the performance of the NRC contract. For example, ABC Corp. would be precluded from the performance of similar work for the company developing the advanced reactor mentioned in the example.

(3)(i) *Example.* The ABC Corp., in response to a competitive RFP, submits a proposal to assist the NRC in revising NRC's guidance documents on the respiratory protection requirements of 10 CFR part 20. ABC Corp. is the only firm determined to be technically acceptable. ABC Corp. has performed substantial work for regulated utilities in the past and is expected to continue similar efforts in the future. The work has and will cover the writing, implementation, and administration of compliance respiratory protection programs for nuclear power plants.

(ii) *Guidance*. This situation would place the firm in a role where its judgment could be biased in relationship to its work for the NRC. Because the nature of the required work is vitally important in terms of the NRC's responsibilities and no reasonable alternative exists, a waiver of the policy, in accordance with 2009.570–9 may be warranted. Any waiver must be fully documented in accordance with the waiver provisions of this policy with particular attention to the establishment of protective mechanisms to guard against bias.

(4)(i) *Example*. The ABC Corp. submits a proposal for a new system to evaluate a specific reactor component's performance for the purpose of developing standards that are important to the NRC program. The ABC Corp. has advised the NRC that it intends to sell the new system to industry once its practicability has been demonstrated. Other companies in this business are using older systems for evaluation of the specific reactor component.

(ii) *Guidance*. A contract could be awarded to the ABC Corp. if the contract stipulates that no information produced under the contract will be used in the contractor's private activities unless this information has been reported to the NRC. Data on how the reactor component performs, which is reported to the NRC by contractors, will normally be disseminated by the NRC to others to preclude an unfair competitive advantage. When the NRC furnishes information about the reactor component to the contractor for the performance of contracted work, the information may not be used in the contractor's private activities unless the information is generally available to others. Further, the contract will stipulate that the contractor will inform the NRC contracting officer of all situations in which the information, developed about the performance of the reactor component under the contract, is proposed to be used.

(5)(i) *Example*. The ABC Corp., in response to a RFP, proposes to assemble a map showing certain seismological features of the Appalachian fold belt. In accordance with the representation in the RFP and 2009.570–3(b)(1)(i), ABC Corp. informs the NRC that it is presently doing seismological studies for several utilities in the eastern United States, but none of the sites are within the geographic area contemplated by the NRC study.

(ii) *Guidance*. The contracting officer would normally conclude that award of a contract would not place ABC Corp. in a conflicting role where its judgment might be biased. Section 2052.209–72(c) Work for Others, would preclude ABC Corp. from accepting work which could create a conflict of interest during the term of the NRC contract.

(6)(i) *Example*. AD Division of ABC Corp., in response to a RFP, submits a proposal to assist the NRC in the safety and environmental review of applications for licenses for the construction, operation, and decommissioning of fuel cycle facilities. ABC Corp. is divided into two separate and distinct divisions, AD and BC. The BC Division performs the same or similar services for industry. The BC Division is currently providing the same or similar services required under the NRC's contract for an applicant or licensee.

(ii) *Guidance*. An NRC contract for that particular work would not be awarded to the ABC Corp. The AD Division could be placed in a position to pass judgment on work performed by the BC Division, which could bias its work for NRC. Further, the Conflict of Interest provisions apply to ABC Corp. and not to separate or distinct divisions within the company. If no reasonable alternative exists, a waiver of the policy could be sought in accordance with 2009.570–9.

(7)(i) *Example*. The ABC Corp. completes an analysis for NRC of steam generator tube leaks at one of a utility's six sites. Three months later, ABC Corp. is asked by this utility to perform the same analysis at another of its sites.

(ii) *Guidance*. Section 2052.290–72(c)(3) would prohibit the contractor from beginning this work for the utility until one year after completion of the NRC work at the first site.

(8)(i) *Example*. ABC Corp. is assisting NRC in a major on-site analysis of a utility's redesign of the common areas between its twin reactors. The contract is for two years with an estimated

value of $5 million. Near the completion of the NRC work, ABC Corp. requests authority to solicit for a $100K contract with the same utility to transport spent fuel to a disposal site. ABC Corp. is performing no other work for the utility.

(ii) *Guidance*. The Contracting Officer would allow the contractor to proceed with the solicitation because it is not in the same technical area as the NRC work; and the potential for technical bias by the contractor because of financial ties to the utility is slight due to the relative value of the two contracts.

(9)(i) *Example*. The ABC Corp. is constructing a turbine building and installing new turbines at a reactor site. The contract with the utility is for five years and has a total value of $100 million. ABC Corp. has responded to an NRC Request For Proposal requiring the contractor to participate in a major team inspection unrelated to the turbine work at the same site. The estimated value of the contract is $75K.

(ii) *Guidance*. An NRC contract would not normally be awarded to ABC Corp. because these factors create the potential for financial loyalty to the utility that may bias the technical judgment of the contractor.

(d) *Other considerations*. (1) The fact that the NRC can identify and later avoid, eliminate, or neutralize any potential organizational conflicts arising from the performance of a contract is not relevant to a determination of the existence of conflicts prior to the award of a contract.

(2) It is not relevant that the contractor has the professional reputation of being able to resist temptations which arise from organizational conflicts of interest, or that a follow-on procurement is not involved, or that a contract is awarded on a competitive or a sole source basis.

2009.570–4 Representation.

(a) The following procedures are designed to assist the NRC contracting officer in determining whether situations or relationships exist which may constitute organizational conflicts of interest with respect to a particular offeror or contractor. The procedures apply to small purchases meeting the criteria stated in the following paragraph (b) of this section.

(b) The organizational conflicts of interest representation provision at 2052.209–71 must be included in solicitations and contracts resulting from unsolicited proposals. The contracting officer must also include this provision for task orders and contract modifications for new work for:

(1) Evaluation services or activities;

(2) Technical consulting and management support services;

(3) Research; and

(4) Other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and would be included in the resulting contract. This representation requirement also applies to all modifications for additional effort under the contract except those issued under the ''Changes'' clause. Where, however, a statement of the type required by the organizational conflicts of interest representation provisions has previously been submitted with regard to the contract being modified, only an updating of the statement is required.

(c) The offeror may, because of actual or potential organizational conflicts of interest, propose to exclude specific kinds of work contained in a RFP unless the RFP specifically prohibits the exclusion. Any such proposed exclusion by an offeror will be considered by the NRC in the evaluation of proposals. If the NRC considers the proposed excluded work to be an essential or integral part of the required work and its exclusion would be to the detriment of the competitive posture of the other offerors, the NRC shall reject the proposal as unacceptable.

(d) The offeror's failure to execute the representation required by paragraph (b) of this section with respect to an invitation for bids is considered to be a minor informality. The offeror will be permitted to correct the omission.

2009.570–5 Contract clauses.

(a) *General contract clause*. All contracts and simplified acquisitions of the types set forth in 2009.570–4(b) must

include the clause entitled, ''Contractor Organizational Conflicts of Interest,'' set forth in 2052.209–72.

(b) *Other special contract clauses.* If it is determined from the nature of the proposed contract that an organizational conflict of interest exists, the contracting officer may determine that the conflict can be avoided, or, after obtaining a waiver in accordance with 2009.570–9, neutralized through the use of an appropriate special contract clause. If appropriate, the offeror may negotiate the terms and conditions of these clauses, including the extent and time period of any restriction. These clauses include but are not limited to:

(1) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related non-production contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and certain of its key personnel) to avoid certain organizational conflicts of interest; and

(4) Clauses which provide for protection of confidential data and guard against its unauthorized use.

2009.570–6 Evaluation, findings, and contract award.

The contracting officer shall evaluate all relevant facts submitted by an offeror and other relevant information. After evaluating this information against the criteria of 2009.570–3, the contracting officer shall make a finding of whether organizational conflicts of interest exist with respect to a particular offeror. If it has been determined that real or potential conflicts of interest exist, the contracting officer shall:

(a) Disqualify the offeror from award;

(b) Avoid or eliminate such conflicts by appropriate measures; or

(c) Award the contract under the waiver provision of 2009.570–9.

2009.570–7 Conflicts identified after award.

If potential organizational conflicts of interest are identified after award with respect to a particular contractor and the contracting officer determines that conflicts do exist and that it would not be in the best interest of the Government to terminate the contract, as provided in the clauses required by 2009.570–5, the contracting officer shall take every reasonable action to avoid, eliminate, or, after obtaining a waiver in accordance with 2009.570–9, neutralize the effects of the identified conflict.

2009.570–8 Subcontracts.

The contracting officer shall require offerors and contractors to submit a representation statement from all subcontractors (other than a supply subcontractor) and consultants performing services in excess of $10,000 in accordance with 2009.570–4(b). The contracting officer shall require the contractor to include contract clauses in accordance with 2009.570–5 in consultant agreements or subcontracts involving performance of work under a prime contract.

2009.570–9 Waiver.

(a) The contracting officer determines the need to seek a waiver for specific contract awards with the advice and concurrence of the program office director and legal counsel. Upon the recommendation of the Senior Procurement Executive, and after consultation with legal counsel, the Executive Director for Operations may waive the policy in specific cases if he determines that it is in the best interest of the United States to do so.

(b) Waiver action is strictly limited to those situations in which:

(1) The work to be performed under contract is vital to the NRC program;

(2) The work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest.

(3) Contractual and/or technical review and surveillance methods can be employed by the NRC to neutralize the conflict.

(c) The justification and approval documents for any waivers must be placed in the NRC Public Document Room.

2009.570–10 Remedies.

In addition to other remedies permitted by law or contract for a breach of the restrictions in this subpart or for any intentional misrepresentation

or intentional nondisclosure of any relevant interest required to be provided for this section, the NRC may debar the contractor from subsequent NRC contracts.

PART 2011—DESCRIBING AGENCY NEEDS

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

SOURCE: 64 FR 49332, Sept. 10, 1999, unless otherwise noted.

Subpart 2011.4—Delivery or Performance Schedules—Contract Clauses

2011.104–70 NRC Clauses.

(a) The contracting officer shall insert the clause at 2052.211–70 Preparation of Technical Reports, when deliverables include a technical report.

(b) The contracting officer shall insert the clause at 2052.211–71 Technical Progress Report, in all solicitations and contracts except—

(1) Firm fixed price; or

(2) Indefinite-delivery contracts to be awarded on a time-and-materials or labor-hour basis, or that provide for issuing delivery orders for specific products/services (line items).

(c) The contracting officer shall insert the clause at 2052.211–72 Financial Status Report, in applicable cost reimbursement solicitations and contracts when detailed assessment of costs is warranted and a Contractor Spending Plan is required. The contracting officer shall use the clause at 2052.211–72 Financial Status Report—Alternate 1 when no Contractor Spending Plan is required.

(d) The contracting officer may alter clauses at 2052.211–70, 2052.211–71, 2052.211–72, and 2052.211–72, Alternate 1 before issuing the solicitation or during competition by solicitation amendment. Reporting requirements should be set at a meaningful and productive frequency. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiations without solicitation amendment.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2013—SIMPLIFIED ACQUISITION PROCEDURES [RESERVED]

PART 2014—SEALED BIDDING

Subpart 2014.2—Solicitation of Bids

Sec.
2014.201 Preparation of invitation for bids.
2014.201–670 Solicitation provisions.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.407 Mistakes in bids.
2014.407–3 Other mistakes disclosed before award.
2014.407–4 Mistakes after award.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

SOURCE: 64 FR 49332, Sept. 10, 1999, unless otherwise noted.

Subpart 2014.2—Solicitation of Bids

2014.201 Preparation of invitation for bids.

2014.201–670 Solicitation provisions.

(a) The contracting officer may insert the provision at 2052.214–70, Prebid Conference, in Invitations for Bids (IFB) where there will be a prebid conference. This provision may be altered by the contracting officer to fit the circumstances of the procurement.

(b) The contracting officer may insert the provision at 2052.214–71, Bidder Qualifications and Past Experience in IFBs on an optional basis to fit the circumstances of the requirement;

(c) The contracting officer shall insert the provision at 2052.214–72 Bid Evaluation in all IFBs. Paragraph (f) of this provision is optional.

(d) The contracting officer shall insert the provision at 2052.214–73 Timely Receipt of Bids in all IFBs.

(e) The contracting officer shall insert the provision at 2052.214–74 Disposition of Bids in all IFBs.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.407 Mistakes in bids.

2014.407–3 Other mistakes disclosed before award.

The Director, Division of Contracts and Property Management, is delegated the authority to make the determinations concerning mistakes in bids, including those with obvious clerical errors, discovered prior to award. These determinations will be concurred in by legal counsel prior to notification of the bidder.

2014.407–4 Mistakes after award.

The cognizant contracting officer is delegated the authority to make determinations concerning mistakes disclosed after award in accordance with FAR 14.407–4. These determinations will be concurred in by legal counsel prior to notification of the contractor.

PART 2015—CONTRACTING BY NEGOTIATION

Subpart 2015.2—Solicitation and Receipt of Proposals and Implementation

Sec.
2015.209–70 Solicitation provisions and contract clauses.

Subpart 2015.3—Source Selection Processes and Techniques

2015.300 Scope of subpart.
2015.303 Responsibilities.
2015.304 Evaluation factors.
2015.305 Proposal evaluation.

Subpart 2015.6—Unsolicited Proposals

2015.606 Agency procedures.
2015.606–1 Receipt and initial review.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

SOURCE: 64 FR 49332, Sept. 10, 1999, unless otherwise noted.

Subpart 2015.2—Solicitation and Receipt of Proposals and Implementation

2015.209–70 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the following clauses in solicitations and contracts that are applicable to the requirement:

(1) Section 2052.215–70, Key Personnel in applicable solicitations and contracts;

(2)(i) Section 2052.215–71, Project Officer Authority in applicable solicitations and contracts for cost-reimbursement, cost-plus-fixed-fee, cost-plus-award-fee, cost sharing, labor-hour or time-and-materials, including task order contracts. This clause and the following alternate clauses are intended for experienced, trained project officers, and may be altered to delete duties where appropriate:

(ii) Section 2052.215–71 Alternate 1. For solicitations for issuance of delivery orders for specific products/services;

(iii) Section 2052.215–71 Alternate 2. For solicitations for firm fixed price contracts, with paragraph (b)(1) of Alternate 1 deleted and the remainder of the clause renumbered.

(3) The contracting officer shall insert the provision at 2052.215–72, Timely Receipt of Proposals in all solicitations;

(4) The contracting officer shall insert the provision at 2052.215–73, Award Notification and Commitment of Public Funds in all solicitations; and

(5) The contracting officer shall insert the provision at 2052.215–74, Disposition of Proposals in all solicitations.

(b) The contracting officer may insert the following provisions in all solicitations as applicable. These provisions may be altered to fit the circumstances of the requirement. These provisions shall be tailored to assure that all sections of the instructions for the Technical and Management Proposal, or Oral Presentation and Supporting Documentation, reflect a one-to-one relationship to the evaluation criteria:

(1) Section 2052.215–75, Proposal Presentation and Format for negotiated procurements for cost type contracts;

(2) Section 2052.215–75 Alternate 1 may be used for all solicitations for negotiated task order contracts;

(3) Section 2015.215–75 Alternate 2 may be used for all solicitations for negotiated fixed price, labor hour, or time and materials contracts:

(c) The contracting officer shall insert the provision at 2052.215–76, PreProposal Conference, in solicitations which include a PreProposal conference. This provision may be altered to fit the circumstances of the requirement.

(d) The contracting officer shall insert the following clauses in solicitations and contracts as applicable:

(1) Section 2052.215–77, Travel Approvals and Reimbursement, must be inserted in cost reimbursement solicitations and contracts which require travel but do not set a specific ceiling amount on that travel. Requests for foreign travel must be submitted to the NRC 30 days in advance of the travel date.

(2) Section 2052.215–78, Travel Approvals and Reimbursement—Alternate 1, shall be inserted in cost reimbursement solicitations and contracts which include a ceiling amount on travel. Requests for foreign travel must be submitted to the NRC 30 days in advance of the travel.

(e) The contracting officer shall include the following provisions in all solicitations for competitive procurements to describe the relationship of technical considerations to cost considerations. The contracting officer may make appropriate changes to these provisions to accurately reflect other evaluation procedures, such as evaluation of proposals against mandatory criteria and bench marking criteria for Information Technology (IT) procurements:

(1) Section 2052.215–79 Contract Award and Evaluation of Proposals, shall be included in all solicitations where technical merit is more important than cost,

(2) Section 2052.215–79 Alternate 1 must be included when proposals are to be evaluated on a lowest price, technically acceptable basis.

(3) Section 2052.215–79 Alternate 2 shall be included where cost and technical merit are of equal significance.

Subpart 2015.3—Source Selection Processes and Techniques

2015.300 Scope of subpart.

This subpart applies to all contracts awarded on a competitive basis in accordance with FAR part 15. This subpart does not apply to contracts awarded on a non-competitive basis to the Small Business Administration under Section 8(a) of the Small Business Act.

2015.303 Responsibilities.

(a) The source selection authority is the contracting officer. The contracting officer, acting as the source selection authority, shall select an offer for award based on review of the Source Evaluation Panel's recommendation contained in the reports described in paragraph (c) of this section.

(b) Any cancellation of solicitations and subsequent rejection of all proposals must be approved by the Head of the Contracting Activity.

(c) For all proposed contracts with total estimated values in excess of the simplified acquisition threshold and expected to result from competitive technical and price/cost negotiations, the cooperative review efforts of technical, contracting, and other administrative personnel are formalized through establishment of a Source Evaluation Panel. A single technical member may be appointed to the Source Evaluation Panel to evaluate proposals with the contracting officer's approval. In these instances, the Designating Official may appoint technical advisors (non-voting members) to assist the single technical member. The Source Evaluation Panel should not exceed five members, including the Chairperson except in unusual cases. The Source Evaluation Panel's proposal evaluation report(s) may include a Competitive Range Report and a Final Evaluation Report (to be used when award will be made after conducting discussions), or a Recommendation for Award Report (to be used when award will be made without discussions).

(d) The Designating Official (Office Director or designee) is responsible for appointing a Source Evaluation Panel to evaluate competitive technical proposals in accordance with the solicitation technical criteria. The Designating Official is also responsible for conducting an independent review and evaluation of the Source Evaluation Panel's proposal evaluation report(s) to the contracting officer.

2015.304 Evaluation factors.

The evaluation factors included in the solicitation serve as the standard against which all proposals are evaluated and are the basis for the development of proposal preparation instructions in accordance with FAR 15.304(b). The solicitation may indicate the relative importance of evaluation factors and subfactors by assigning a numerical weight to each factor. If a solicitation uses numerical weights, those weights shall be stated in the solicitation. The relative importance of factors that are not numerically weighted will be stated in the solicitation. Examples of factors which may not be numerically weighted are conflict of interest, estimated cost, and ''go/no go'' evaluation factors.

2015.305 Proposal evaluation.

The contracting officer may provide offerors' cost proposals and supporting financial information to members of the Source Evaluation Panel at the same time technical proposals are distributed for evaluation. The Source Evaluation Panel shall use this information to perform an accurate integrated assessment of each offeror's proposal based on all the facts presented to them.

Subpart 2015.6—Unsolicited Proposals

2015.606 Agency procedures.

(a) The Division of Contracts and Property Management is the point of contact for the receipt, acknowledgment, and handling of unsolicited proposals.

(b) An original and two copies of the unsolicited proposal as well as requests for additional information regarding their preparation, must be submitted

to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, Mail Stop T–7–I–2, Washington, DC 20555.

(c) The Division of Contracts and Property Management shall enter each unsolicited proposal into the unsolicited proposal tracking system.

2015.606–1 Receipt and initial review.

(a) The Division of Contracts and Property Management shall acknowledge receipt of an unsolicited proposal, complete a preliminary review, assign a docket number, and send copies of the unsolicited proposal to the appropriate program office Director(s) or designee for evaluation.

(b) The Division of Contracts and Property Management shall be responsible for controlling reproduction and distribution of proposal material by notifying evaluators of their responsibilities and tracking the number of proposals received and forwarded to evaluators.

(c) An acknowledgment letter will be sent to the proposer by The Division of Contracts and Property Management. The letter will provide an estimated date for a funding decision or identifying the reasons for non-acceptance of the proposal for review in accordance with FAR 15.606–1(b) and FAR 15.606–1(c).

PART 2016—TYPES OF CONTRACTS

Subpart 2016.3—Cost Reimbursement Contracts

Sec.

2016.307–70 Contract provisions and clauses.

Subpart 2016.5—Indefinite-Delivery Contracts

2016.506–70 Contract provisions and clauses.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

SOURCE: 64 FR 49334, Sept. 10, 1999, unless otherwise noted.

Subpart 2016.3—Cost Reimbursement Contracts

2016.307–70 Contract provisions and clauses.

(a) The contracting officer shall insert the provision at 2052.216–70, Level of Effort, in solicitations for negotiated procurements containing labor costs other than maintenance services to be awarded on a cost reimbursement, cost sharing, cost-plus-award fee, cost-plus-fixed fee, time and materials, or labor hour basis.

(b) The contracting officer may insert the following provisions and clauses in cost reimbursement contracts as applicable:

(1) Section 2052.216–71, Indirect Cost Rates (where provisional rates without ceilings apply).

(2) Section 2052.216–71, Indirect Cost Rates—Alternate 1 (where redetermined rates apply).

(3) Section 2052.216–71, Indirect Cost Rates (Ceiling)—Alternate 2 (where provisional rates with ceilings apply).

(c) The contracting officer may make appropriate changes to these clauses to reflect different arrangements.

Subpart 2016.5—Indefinite-Delivery Contracts

2016.506–70 Contract provisions and clauses.

The contracting officer shall insert the following clauses in all solicitations and contracts that contain task order procedures. These clauses may be altered by the contracting officer to fit the circumstances of the requirement.

(a) Section 2052.216–72, Task Order Procedures;

(b) Section 2052.216–73, Accelerated Task Order Procedures.

PART 2017—SPECIAL CONTRACTING METHODS

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 481(b).

SOURCE: 64 FR 49334, Sept. 10, 1999, unless otherwise noted.

Subpart 2017.2—Options

2017.204 Contracts

(a) The contracting officer may approve non-competitive extensions, within the limits of his/her delegation, to five-year contracts up to a total of an additional 6 months for the purpose of completing the competitive process for a follow-on contract if the request for procurement action for a follow-on or replacement contract was received in the Division of Contracts and Property Management not less than 6 months before the end of the fifth year.

(b) Other extensions beyond five years must be approved by the Competition Advocate.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2019—SMALL BUSINESS PROGRAMS

Subpart 2019.7—Subcontracting With Small Business, Small Disadvantaged Business, and Women-Owned Small Business Concerns

Sec.
2019.705 Responsibilities of the contracting officer under the subcontracting assistance program.
2019.705–4 Reviewing the subcontracting plan.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

SOURCE: 64 FR 49334, Sept. 10, 1999, unless otherwise noted.

Subpart 2019.7—Subcontracting With Small Business, Small Disadvantaged Business, and Women-Owned Small Business Concerns

2019.705 Responsibilities of the contracting officer under the subcontracting assistance program.

2019.705–4 Reviewing the subcontracting plan.

The contracting officer may accept the terms of an overall or ''master'' company subcontracting plan incorporated by reference into a specific subcontracting plan submitted by the apparent successful offeror/bid for a specific contract, only upon ensuring that the required information, goals, and assurances are included in accordance with FAR 19.704.

PART 2022—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2022.1—Basic Labor Policies

Sec.
2022.101–1 General.
2022.103–4 Approvals.

Subpart 2022.9—Nondiscrimination Because of Age

2022.901–70 Contract provisions.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 4186 (b)

SOURCE: 64 FR 49334, Sept. 10, 1999, unless otherwise noted.

Subpart 2022.1—Basic Labor Policies

2022.101–1 General.

The Head of the Contracting Activity shall designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance. Contractor notification shall be made in accordance with FAR 52.222–1, ''Notice to the Government of Labor Disputes.''

2022.103–4 Approvals.

The agency approving official for contractor overtime is the contracting officer.

Subpart 2022.9—Nondiscrimination Because of Age

2022.901–70 Contract provisions.

The contracting officer shall insert the provision found at 2052.222–70, Nondiscrimination Because of Age, in all solicitations.

PART 2024—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2024.1—Protection of Individual Privacy

Sec.
2024.103 Procedures.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

SOURCE: 64 FR 49335, Sept. 10, 1999, unless otherwise noted.

Subpart 2024.1—Protection of Individual Privacy

2024.103 Procedures.

The provisions at 10 CFR part 9, subpart B, Privacy Act Regulations, are applicable to the maintenance or disclosure of information for a system of records on individuals.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

The provisions at 10 CFR part 9, subpart A, Freedom of Information Act Regulations, are applicable to the availability of NRC records to the public.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2027—PATENTS, DATA, AND COPYRIGHTS

Subpart 2027.3—Patent Rights Under Government Contract

Sec.
2027.305–3 Follow-up by Government.
2027.305–70 Solicitation provisions and contract clauses.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

SOURCE: 64 FR 49335, Sept. 10, 1999, unless otherwise noted.

Subpart 2027.3—Patent Rights Under Government Contracts

2027.305–3 Follow-up by Government.

(a) The contracting officer shall, as a part of the closeout of a contract, require each contractor to report any patents, copyrights, or royalties attained using any portion of the contract funds in writing.

(b) If no activity is to be reported, the contractor shall provide the following written determination before final payment and closeout of the contract:

(1) No inventions or discoveries were made,

(2) No copyrights were secured, produced, or composed,

(3) No notices or claims of patent or copyright infringement have been received by the contractor or its subcontractors; and

(4) No royalty payments were directly involved in the contract or reflected in the contract price to the Government, nor were any royalties or other payments paid or owed directly to others.

(c) The contracting officer may waive any of the requirements in paragraphs (b) (1) through (4) of this section, after documenting the file to indicate the—

(1) Impracticality of obtaining the document(s); and

(2) Steps taken to attempt to obtain them.

(d) The contracting officer shall notify agency legal counsel responsible for patents whenever a contractor reports any patent, copyright, or royalty activity. The contract officer shall document the official file with the resolution to protect the Government's rights before making any final payment and closing out the contract.

2027.305–70 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 2052.227–70, Drawings, Designs, Specifications, and Data, in all solicitations and contracts in which drawings, designs, specifications, or other data will be developed and the NRC is required to retain full rights to them (except for the contractor's right to retain a copy for its own use). When any of the clauses prescribed at FAR 27.409, Solicitation Provisions and Contract Clauses, are included in the solicitation/contract, this clause will not be used.

PART 2030—COST ACCOUNTING STANDARDS

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

SOURCE: 64 FR 49335, Sept. 10, 1999, unless otherwise noted.

Subpart 2030.2—CAS Program Requirements

2030.201–5 Waiver.

Requests to waive Cost Accounting Standards (CAS) requirements must be submitted to the Chairman, CAS Board by the Competition Advocate. The requests for waiver must be forwarded through the Head of the Contracting Activity with supporting documentation and rationale in accordance with FAR 30.201–5.

PART 2031—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 2031.1—Applicability

Sec.
2031.109–70 Contract clauses.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

SOURCE: 64 FR 49335, Sept. 10, 1999, unless otherwise noted.

Subpart 2031.1—Applicability

2031.109–70 Contract clauses.

The contracting officer shall insert the clause at 2052.231–70, Precontract Costs, in all cost type contracts when costs in connection with work under the contract will be incurred by the contractor before the effective date of the contract. Approval for use of this clause must be obtained at one level above the contracting officer.

PART 2032—CONTRACT FINANCING

Subpart 2032.4—Advance Payments for Non-Commercial Items

Sec.
2032.402 General.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

SOURCE: 64 FR 49335, Sept. 10, 1999, unless otherwise noted.

Subpart 2032.4—Advance Payments for Non-Commercial Items

2032.402 General.

(a) The contracting officer has the responsibility and authority for making findings and determinations and for approval of contract terms concerning advance payments.

(b) Before authorizing any advance payment agreements, except for subscriptions to publications, the contracting officer shall coordinate with the Office of the Chief Financial Officer, Division of Accounting and Finance, to ensure completeness of contractor submitted documentation.

PART 2033—PROTESTS, DISPUTES, AND APPEALS

Subpart 2033.1—Protests

Sec.
2033.103 Protests to the agency.

Subpart 2033.2—Disputes and Appeals

2033.204 Policy.
2033.211 Contract Claims—Contracting officer's decision.
2033.215 Contract clause.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

SOURCE: 64 FR 49335, Sept. 10, 1999, unless otherwise noted.

Subpart 2033.1—Protests

2033.103 Protests to the agency.

Protests to the agency are first considered by the contracting officer. In accordance with FAR 33.103(d)(4), the protestor may appeal the contracting officer's decision by delivering or providing a written request to the agency Director, Division of Contracts or Property Management, or designee, to conduct an independent review of the Contracting Officer's decision.

Subpart 2033.2—Disputes and Appeals

2033.204 Policy.

Final decisions of the NRC contracting officer on contract disputes and appeals issued under to the Contracts Disputes Act will be heard by the Department of Energy Board of Contract Appeals (EBCA) under an interagency agreement between the NRC and the Department of Energy. The EBCA rules appear in 10 CFR part 1023.

2033.211 Contract Claims—Contracting officer's decision.

The contracting officer shall alter the paragraph at FAR 33.211(a)(4)(v) to identify the Energy Board of Contract Appeals and include its address: U.S. Department of Energy, Board of Contract Appeals, HG–50, Building 950, 1000 Independence Ave., SW., Washington, DC 20585, when preparing a written decision.

2033.215 Contract clause.

The contracting officer shall use the clause at FAR 52.233–1, Disputes, with its Alternate I, where continued performance is vital to national security, the public health and safety, critical and major agency programs, or other

essential supplies or services whose timely reprocurement from other sources would be impractical.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2035—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
2035.70 Contract clauses.
2035.71 Broad agency announcements.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

SOURCE: 64 FR 49336, Sept. 10, 1999, unless otherwise noted.

2035.70 Contract clauses.

(a) The contracting officer shall insert the following clause in all solicitations and contracts for research and development by private contractors and universities and for other technical services, as appropriate:

(1) Section 2052.235–70, Publication of Research Results;

(2) Section 2052.235–72 Safety, Health and Fire Protection.

2035.71 Broad agency announcements.

(a) Criteria for selecting contractors may include such factors as:

(1) Unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(2) Overall scientific, technical, or economic merits of the proposal.

(3) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(4) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(5) Potential contribution of the effort to NRC's mission.

(6) Overall standing among similar proposals available for evaluation and/or evaluation against the known state-of-the-art technology.

(b) Once a proposal is received, communication between the agency's scientific or engineering personnel and the principal investigator is permitted for clarification purposes only and must be coordinated through the Division of Contracts and Property Management.

(c) After evaluation of the proposals, the Designating Official shall submit a comprehensive evaluation report to the contracting officer which recommends the source(s) for contract award. The report must reflect the basis for the selection or nonselection of each proposal received.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2042—CONTRACT ADMINISTRATION

Subpart 2042.570—Differing Professional Views (DPV)

Sec.
2042.570–1 Policy.
2042.570–2 Solicitation provisions and contract clauses.

Subpart 2042.8—Disallowance of Costs

2042.803 Disallowing costs after incurrence.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

SOURCE: 64 FR 49336, Sept. 10, 1999, unless otherwise noted.

Subpart 2042.570—Differing Professional Views (DPV)

2042.570–1 Policy.

The Nuclear Regulatory Commission's (NRC) policy is to support the contractor's expression of professional health and safety-related concerns associated with the contractor's work for the NRC that may differ from a prevailing NRC staff view, disagree with an NRC decision or policy position, or take issue with proposed or established agency practices. An occasion may arise when an NRC contractor, contractor's personnel, or subcontractor personnel believes that a conscientious expression of a competent judgement is required to document these concerns on matters directly associated with its performance of the contract. The procedure described in 2052.242–71, Procedures for Resolving NRC Contractor Differing Professional Views, provides for the expression and resolution of DPVs of health and safety-related concerns associated with the mission of the agency by NRC contractors, contractor personnel, or subcontractor personnel on matters directly associated with its performance of the contract. The contractor shall provide a copy of the NRC DPV procedure to all of its employees performing under this contract and to all subcontractors who shall, in turn, provide a copy of the procedure to its employees. The prime contractor or subcontractor shall submit all DPV's received but need not endorse them.

2042.570–2 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 2052.242–70, Resolving NRC Contractor Differing Professional Views, in the body of cost reimbursement solicitations and contracts for professional services, as appropriate. This clause may not be altered by the contracting officer.

(b) The contracting officer shall include the clause at 2052.242–71, Procedures for Resolving NRC Contractor Differing Professional Views, as an attachment to cost reimbursement solicitations and contracts for professional services, as appropriate. This clause may not be altered by the contracting officer.

Subpart 2042.8—Disallowance of Costs

2042.803 Disallowing costs after incurrence.

(a) Vouchers and invoices submitted to NRC must be submitted to the contracting officer or designee for review and approval for payment. If the examination of a voucher or invoice raises a question regarding the allowability of a cost submitted, the contracting officer or designee shall:

(1) Hold informal discussions with the contractor as appropriate.

(2) If the discussions do not resolve the matter, the contracting officer shall issue a notice advising the contractor of costs disallowed. The notice must advise the contractor that it may:

(i) If in disagreement with the disallowance, submit a written claim to the contracting officer for payment of the disallowed cost and explain why the cost should be reimbursed; or

(ii) If the disagreement(s) cannot be settled, file a claim under the disputes clause which will be processed in accordance with disputes procedures found at FAR subpart 33.2; and

(3) Process the voucher or invoice for payment and advise the NRC Division of Accounting and Finance to deduct the disallowed costs when scheduling the voucher for payment.

(b) When audit reports or other notifications question costs or consider them unallowable, the contracting officer shall resolve all cost issues through discussions with the contractor and/or auditor within six months of receipt of the audit report whenever possible.

(1) One of the following courses of action must be pursued:

(i) Accept and implement audit recommendations as submitted;

(ii) Accept the principle of the audit recommendation but adjust the amount of the questioned costs;

(iii) Reject audit findings and recommendations.

(2) When implementing the chosen course of action, the contracting officer shall:

(i) Hold discussions with the auditor and contractor, as appropriate;

(ii) If the contracting officer agrees with the auditor concerning the questioned costs, attempt to negotiate a mutual settlement of questioned costs;

(iii) Issue a final decision, including any disallowance of questioned costs; inform the contractor of his/her right to appeal the decision under the disputes procedures found at FAR subpart 33.2; and provide a copy of the final decision to the Office of the Inspector General; and

(iv) Initiate immediate recoupment actions for all disallowed costs owed the Government by one or more of the following methods:

(A) Request that the contractor provide a credit adjustment (offset) and an adequate description/explanation of the adjustment against amounts billed the Government on the next or other future invoice(s) submitted under the contract for which the disallowed costs apply;

(B) Deduct the disallowed costs from the next invoice submitted under the contract;

(C) Deduct the disallowed costs on a schedule determined by the contracting officer after discussion with the contractor (if the contracting officer determines that an immediate and complete deduction is inappropriate); and

(D) Advise the contractor that a refund is immediately payable to the Government (in situations where there are insufficient payments owed by the Government to effect recovery from the contract).

PART 2045—GOVERNMENT PROPERTY

Subpart 2045.3—Providing Government Property to Contractors

Sec.
2045.370 Providing Government property (in general).
2045.371 Property accountability procedures.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

SOURCE: 64 FR 49337, Sept. 10, 1999, unless otherwise noted.

Subpart 2045.3—Providing Government Property to Contractors

2045.370 Providing Government property (in general).

(a) Unless otherwise provided for in FAR 45.302–1(d), applicable to Government facilities with a unit cost of less than $10,000, a contractor may be provided Government property or allowed to purchase the property at Government expense if the contracting officer, with the advice of the agency property official determines that:

(1) No practicable or economical alternative exists; e.g., acquisition from other sources, utilization of subcontractors, rental of property, or modification of program project requirements;

(2) Furnishing Government property is likely to result in substantially lower costs to the Government for the items produced or services rendered when all costs involved (e.g., transportation, installation, modification, maintenance, etc.) are compared with the costs to the Government of the contractor's use of privately-owned property; and

(3) The Government receives adequate consideration for providing the property.

2045.371 Property accountability procedures.

(a) The threshold for detailed reporting of capitalized equipment by contractors is $50,000.

(b) The contractor shall send a copy of each Financial Status Report (NRCAR 2052.211–72, and 2052.211–72 Alternate 1), that references the acquisition of, or change in status of, contractor-held property purchased with government funds valued at the time of purchase at $50,000 or more to the Chief, Property and Acquisition Oversight Branch, Division of Contracts and Property Management.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2052.2—Text of Provisions and Clauses

Sec.

2052.200 Authority.
2052.204–70 Security.
2052.204–71 Site access badge requirements.
2052.209–70 Current/former agency employee involvement.
2052.209–71 Contractor organizational conflicts of interest (representation).
2052.209–72 Contractor organizational conflicts of interest.
2052.211–70 Preparation of technical reports.
2052.211–71 Technical progress report.
2052.211–72 Financial status report.
2052.214–70 Prebid conference.
2052.214–71 Bidder qualifications and past experiences.
2052.214–72 Bid evaluation.
2052.214–73 Timely receipt of bids.
2052.214–74 Disposition of bids.
2052.215–70 Key personnel.
2052.215–71 Project officer authority.
2052.215–72 Timely receipt of proposals.
2052.215–73 Award notification and commitment of public funds.
2052.215–74 Disposition of proposals.
2052.215–75 Proposal presentation and format.
2052.215–76 Preproposal conference.
2052.215–77 Travel approvals and reimbursement.
2052.215–78 Travel approvals and reimbursement—Alternate 1.
2052.215–79 Contract award and evaluation of proposals.
2052.216–70 Level of effort.
2052.216–71 Indirect cost rates.
2052.216–72 Task order procedures.
2052.216–73 Accelerated task order procedures.
2052.222–70 Nondiscrimination because of age.
2052.227–70 Drawings, designs, specifications, and other data
2052.231–70 Precontract costs.
2052.235–70 Publication of research results.
2052.235–71 Safety, health, and fire protection.
2052.242–70 Resolving differing professional views.
2052.242–71 Procedures for resolving differing professional views.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

SOURCE: 64 FR 49337, Sept. 10, 1999, unless otherwise noted.

Subpart 2052.2—Text of Provisions and Clauses

2052.200 Authority.

2052.204–70 Security.

As prescribed at 2004.404(a), the contracting officer shall insert the following clause in solicitations and contracts during which the contractor may have access to, or contact with classified information, including National Security information, restricted data, formerly restricted data, and other classified data:

SECURITY (OCT 1999)

(a) Security/Classification Requirements Form. The attached NRC Form 187 (See List of Attachments) furnishes the basis for providing security and classification requirements to prime contractors, subcontractors, or others (e.g., bidders) who have or may have an NRC contractual relationship that requires access to classified information or matter, access on a continuing basis (in excess of 90 or more days) to NRC Headquarters controlled buildings, or otherwise requires NRC photo identification or card-key badges.

(b) It is the contractor's duty to safeguard National Security Information, Restricted Data, and Formerly Restricted Data. The contractor shall, in accordance with the Commission's security regulations and requirements, be responsible for safeguarding National Security Information, Restricted Data, and Formerly Restricted Data, and for protecting against sabotage, espionage, loss, and theft, the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall transmit to the Commission any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract upon completion or termination of this contract.

(1) The contractor shall complete a certificate of possession to be furnished to the Commission specifying the classified matter to be retained if the retention is:

(i) Required after the completion or termination of the contract; and

(ii) Approved by the contracting officer.

(2) The certification must identify the items and types or categories of matter retained, the conditions governing the retention of the matter and their period of retention, if known. If the retention is approved by the contracting officer, the security provisions of the contract continue to be applicable to the matter retained.

(c) In connection with the performance of the work under this contract, the contractor may be furnished, or may develop or acquire, proprietary data (trade secrets) or confidential or privileged technical, business, or financial information, including Commission plans, policies, reports, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93–579), or other information which has not been released to the public or has been determined by the Commission to be otherwise exempt from disclosure to the public. The contractor agrees to hold the information in confidence and not to directly or indirectly duplicate, disseminate, or disclose the information, in whole or in part, to any other person or organization except as necessary to perform the work under this contract. The contractor agrees to return the information to the Commission or otherwise dispose of it at the direction of the contracting officer. Failure to comply with this clause is grounds for termination of this contract.

(d) *Regulations*. The contractor agrees to conform to all security regulations and requirements of the Commission which are subject to change as directed by the NRC Division of Facilities and Security and the Contracting Officer. These changes will be under the authority of the FAR Changes clause referenced in Section I of this document.

(e) *Definition of national security information*. As used in this clause, the term *national security information* means information that has been determined pursuant to Executive Order 12958 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(f) *Definition of restricted data*. As used in this clause, the term Restricted Data means all data concerning design, manufacture, or utilization of atomic weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy, but does not include data declassified or removed from the Restricted Data category under to Section 142 of the Atomic Energy Act of 1954, as amended.

(g) *Definition of formerly restricted data*. As used in this clause the term Formerly Restricted Data means all data removed from the Restricted Data category under Section 142–d of the Atomic Energy Act of 1954, as amended.

(h) *Security clearance personnel*. The contractor may not permit any individual to have access to Restricted Data, Formerly Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements applicable to the particular type or category of classified information to which access is required. The contractor shall also execute a Standard Form 312, Classified Information Nondisclosure Agreement, when access to classified information is required.

(i) *Criminal liabilities*. Disclosure of National Security Information, Restricted Data, and Formerly Restricted Data relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data, Formerly Restricted Data, or any other classified matter that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.;* 18 U.S.C. 793 and 794; and Executive Order 12958.)

(j) *Subcontracts and purchase orders*. Except as otherwise authorized, in writing, by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

(k) In performing contract work, the contractor shall classify all documents, material, and equipment originated or generated by the contractor in accordance with guidance issued by the Commission. Every subcontract and purchase order issued under the contract that involves originating or generating classified documents, material, and equipment must provide that the subcontractor or supplier assign the proper classification to all documents, material, and equipment in accordance with guidance furnished by the contractor.

(End of clause)

2052.204–71 Site access badge requirements.

As prescribed at 2004.404(b), the contracting officer shall insert the following clause in all solicitations and contracts under which the contractor will require access to Government facilities. The clause may be altered to reflect any special conditions to be applied to foreign nationals:

SITE ACCESS BADGE REQUIREMENTS (JAN 1993)

During the life of this contract, the rights of ingress and egress for contractor personnel must be made available as required. In this regard, all contractor personnel whose duties under this contract require

their presence on-site shall be clearly identifiable by a distinctive badge furnished by the Government. The Project Officer shall assist the contractor in obtaining the badges for contractor personnel. It is the sole responsibility of the contractor to ensure that each employee has proper identification at all times. All prescribed identification must be immediately delivered to the Security Office for cancellation or disposition upon the termination of employment of any contractor personnel. Contractor personnel shall have this identification in their possession during on-site performance under this contract. It is the contractor's duty to assure that contractor personnel enter only those work areas necessary for performance of contract work and to assure the safeguarding of any Government records or data that contractor personnel may come into contact with.

(End of clause)

2052.209–70 Current/former agency employee involvement.

As prescribed at 2009.105–70, the contracting officer shall insert the following provision in all solicitations:

CURRENT/FORMER AGENCY EMPLOYEE INVOLVEMENT (OCT 1999)

(a) The following representation is required by the NRC Acquisition Regulation 2009.105–70(b). It is not NRC policy to encourage offerors and contractors to propose current/former agency employees to perform work under NRC contracts and as set forth in the above cited provision, the use of such employees may, under certain conditions, adversely affect NRC's consideration of noncompetitive proposals and task orders.

(b) There ( ) are ( ) are no current/former NRC employees (including special Government employees performing services as experts, advisors, consultants, or members of advisory committees) who have been or will be involved, directly or indirectly, in developing the offer, or in negotiating on behalf of the offeror, or in managing, administering, or performing any contract, consultant agreement, or subcontract resulting from this offer. For each individual so identified, the Technical and Management proposal must contain, as a separate attachment, the name of the individual, the individual's title while employed by the NRC, the date individual left NRC, and a brief description of the individual's role under this proposal.

(End of provision)

2052.209–71 Contractor organizational conflicts of interest (representation).

As prescribed in 2009.570–4(b) and 2009.570–8, the contracting officer must insert the following provision in applicable solicitations and in contracts resulting from unsolicited proposals. The contracting officer must also include the following in task orders and contract modifications for new work.

CONTRACTOR ORGANIZATIONAL CONFLICTS OF INTEREST REPRESENTATION (OCT 1999)

I represent to the best of my knowledge and belief that:

The award to _____ of a contract or the modification of an existing contract does / / does not / / involve situations or relationships of the type set forth in 48 CFR 2009.570–3(b).

(a) If the representation, as completed, indicates that situations or relationships of the type set forth in 48 CFR 2009.570–3(b) are involved, or the contracting officer otherwise determines that potential organizational conflicts of interest exist, the offeror shall provide a statement in writing that describes in a concise manner all relevant factors bearing on his representation to the contracting officer. If the contracting officer determines that organizational conflicts exist, the following actions may be taken:

(1) Impose appropriate conditions which avoid such conflicts;

(2) Disqualify the offeror; or

(3) Determine that it is otherwise in the best interest of the United States to seek award of the contract under the waiver provisions of 48 CFR 2009–570–9.

(b) The refusal to provide the representation required by 48 CFR 2009.570–4(b), or upon request of the contracting officer, the facts required by 48 CFR 2009.570–3(b), must result in disqualification of the offeror for award.

(End of provision)

2052.209–72 Contractor organizational conflicts of interest.

As prescribed at 2009.570–5(a) and 2009.570–8, the contracting officer must insert the following clause in all applicable solicitations, contracts, and simplified acquisitions of the types described; 2009.570–4(b):

CONTRACTOR ORGANIZATIONAL CONFLICTS OF INTEREST (JAN 1993)

(a) *Purpose*. The primary purpose of this clause is to aid in ensuring that the contractor:

(1) Is not placed in a conflicting role because of current or planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract; and

(2) Does not obtain an unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) *Scope.* The restrictions described apply to performance or participation by the contractor, as defined in 48 CFR 2009.570–2 in the activities covered by this clause.

(c) *Work for others.* (1) Notwithstanding any other provision of this contract, during the term of this contract, the contractor agrees to forego entering into consulting or other contractual arrangements with any firm or organization the result of which may give rise to a conflict of interest with respect to the work being performed under this contract. The contractor shall ensure that all employees under this contract abide by the provision of this clause. If the contractor has reason to believe, with respect to itself or any employee, that any proposed consultant or other contractual arrangement with any firm or organization may involve a potential conflict of interest, the contractor shall obtain the written approval of the contracting officer before the execution of such contractual arrangement.

(2) The contractor may not represent, assist, or otherwise support an NRC licensee or applicant undergoing an NRC audit, inspection, or review where the activities that are the subject of the audit, inspection, or review are the same as or substantially similar to the services within the scope of this contract (or task order as appropriate) except where the NRC licensee or applicant requires the contractor's support to explain or defend the contractor's prior work for the utility or other entity which NRC questions.

(3) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site, the contractor shall neither solicit nor perform work in the same or similar technical area for that licensee or applicant organization for a period commencing with the award of the task order or beginning of work on the site (if not a task order contract) and ending one year after completion of all work under the associated task order, or last time at the site (if not a task order contract).

(4) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site,

(i) The contractor may not solicit work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate.

(ii) The contractor may not perform work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate, and for one year thereafter.

(iii) Notwithstanding the foregoing, the contracting officer may authorize the contractor to solicit or perform this type of work (except work in the same or similar technical area) if the contracting officer determines that the situation will not pose a potential for technical bias or unfair competitive advantage.

(d) *Disclosure after award.* (1) The contractor warrants that to the best of its knowledge and belief, and except as otherwise set forth in this contract, that it does not have any organizational conflicts of interest as defined in 48 CFR 2009.570–2.

(2) The contractor agrees that if, after award, it discovers organizational conflicts of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The NRC may, however, terminate the contract if termination is in the best interest of the Government.

(3) It is recognized that the scope of work of a task-order-type contract necessarily encompasses a broad spectrum of activities. Consequently, if this is a task-order-type contract, the contractor agrees that it will disclose all proposed new work involving NRC licensees or applicants which comes within the scope of work of the underlying contract. Further, if this contract involves work at a licensee or applicant site, the contractor agrees to exercise diligence to discover and disclose any new work at that licensee or applicant site. This disclosure must be made before the submission of a bid or proposal to the utility or other regulated entity and must be received by the NRC at least 15 days before the proposed award date in any event, unless a written justification demonstrating urgency and due diligence to discover and disclose is provided by the contractor and approved by the contracting officer. The disclosure must include the statement of work, the dollar value of the proposed contract, and any other documents that are needed to fully describe the proposed work for the regulated utility or other regulated entity. NRC may deny approval of the disclosed work only when the NRC has issued a task order which includes the technical area and, if site-specific, the site, or has plans to issue a task order which includes the technical area and, if site-specific, the site, or when the work violates paragraphs (c)(2), (c)(3) or (c)(4) of this section.

(e) *Access to and use of information.* (1) If, in the performance of this contract, the contractor obtains access to information, such as NRC plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. Section 552a (1988)), or the Freedom of Information Act (5

U.S.C. Section 552 (1986)), the contractor agrees not to:

(i) Use this information for any private purpose until the information has been released to the public;

(ii) Compete for work for the Commission based on the information for a period of six months after either the completion of this contract or the release of the information to the public, whichever is first;

(iii) Submit an unsolicited proposal to the Government based on the information until one year after the release of the information to the public; or

(iv) Release the information without prior written approval by the contracting officer unless the information has previously been released to the public by the NRC.

(2) In addition, the contractor agrees that, to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. Section 552a (1988)), or the Freedom of Information Act (5 U.S.C. Section 552 (1986)), or other confidential or privileged technical, business, or financial information under this contract, the contractor shall treat the information in accordance with restrictions placed on use of the information.

(3) Subject to patent and security provisions of this contract, the contractor shall have the right to use technical data it produces under this contract for private purposes provided that all requirements of this contract have been met.

(f) *Subcontracts*. Except as provided in 48 CFR 2009.570–2, the contractor shall include this clause, including this paragraph, in subcontracts of any tier. The terms *contract*, *contractor*, and *contracting officer*, must be appropriately modified to preserve the Government's rights.

(g) *Remedies*. For breach of any of the above restrictions, or for intentional nondisclosure or misrepresentation of any relevant interest required to be disclosed concerning this contract or for such erroneous representations that necessarily imply bad faith, the Government may terminate the contract for default, disqualify the contractor from subsequent contractual efforts, and pursue other remedies permitted by law or this contract.

(h) *Waiver*. A request for waiver under this clause must be directed in writing to the contracting officer in accordance with the procedures outlined in 48 CFR 2009.570–9.

(i) *Follow-on effort*. The contractor shall be ineligible to participate in NRC contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the contractor may not perform any technical consulting or management support services work or evaluation activities under this contract on any of its products or services or the products or services of another firm if the contractor has been substantially involved in the development or marketing of the products or services.

(1) If the contractor under this contract, prepares a complete or essentially complete statement of work or specifications, the contractor is not eligible to perform or participate in the initial contractual effort which is based on the statement of work or specifications. The contractor may not incorporate its products or services in the statement of work or specifications unless so directed in writing by the contracting officer, in which case the restrictions in this paragraph do not apply.

(2) Nothing in this paragraph precludes the contractor from offering or selling its standard commercial items to the Government.

(End of clause)

2052.211–70 Preparation of technical reports.

As prescribed at 2011.104–70(a), the contracting officer shall insert the following clause in solicitations and contracts when deliverables include a technical report. The contracting officer may alter this clause before issuing the solicitation or during competition by solicitation amendment. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiation without amending the solicitation.

PREPARATION OF TECHNICAL REPORTS (JAN 1993)

All technical reports required by Section C and all Technical Progress Reports required by Section F are to be prepared in accordance with the attached Management Directive 3.8, ''Unclassified Contractor and Grantee Publications in the NUREG Series.'' Management Directive 3.8 is not applicable to any Contractor Spending Plan (CSP) and any Financial Status Report that may be included in this contract. (See List of Attachments).

(End of clause)

2052.211–71 Technical progress report.

As prescribed at 2011.104–70(b), the contracting officer shall insert the following clause in all solicitations and contracts except firm fixed price or indefinite delivery contracts to be awarded on a time-and-materials or labor-hour basis, or which provide for issuance of delivery orders for specific

products/serviced line items. The contracting officer may alter this clause prior to issuance of the solicitation or during competition by solicitation amendment. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiation without amending the solicitation.

TECHNICAL PROGRESS REPORT (JAN 1993)

The contractor shall provide a monthly Technical Progress Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, appropriate financial tracking code specified by the NRC Project Officer, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task/task order:

(a) A listing of the efforts completed during the period, and milestones reached or, if missed, an explanation provided;

(b) Any problems or delays encountered or anticipated and recommendations for resolution. If the recommended resolution involves a contract modification, e.g., change in work requirements, level of effort (cost) or schedule delay, the contractor shall submit a separate letter to the contracting officer identifying the required change and estimated cost impact;

(c) A summary of progress to date; and

(d) Plans for the next reporting period.

(End of clause)

2052.211–72 Financial status report.

As prescribed at 2011.104–70(c), the contracting officer shall insert the following clause in applicable cost reimbursement solicitations and contracts when a detailed assessment of costs is warranted and a contractor spending plan is required. The contracting officer may alter this clause and Alternate 1 of this clause before issuing the solicitation or during competition by amending the solicitation. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiation, without amending the solicitation.

FINANCIAL STATUS REPORT (OCT 1999)

The contractor shall provide a monthly Financial Status Report (FSR) to the project officer and the contracting officer. The FSR shall include the acquisition of, or changes in the status of, contractor-held property acquired with government funds valued at the time of purchase at $50,000 or more. Whenever these types of property changes occur, the contractor shall send a copy of the report to the Chief, Property and Acquisition Oversight Branch, Office of Administration. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, the appropriate financial tracking code (e.g., Job Code Number or JCN) specified by the NRC Project Officer, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following information for each discrete task:

(a) Total estimated contract amount.

(b) Total funds obligated to date.

(c) Total costs incurred this reporting period.

(d) Total costs incurred to date.

(e) Detail of all direct and indirect costs incurred during the reporting period for the entire contract or each task, if it is a task ordering contract.

(f) Balance of obligations remaining.

(g) Balance of funds required to complete contract/task order.

(h) Contractor Spending Plan (CSP) status: A revised CSP is required with the Financial Status Report whenever the contractor or the contracting officer has reason to believe that the total cost for performance of this contract will be either greater or substantially less than what had been previously estimated.

(1) Projected percentage of completion cumulative through the report period for the project/task order as reflected in the current CSP.

(2) Indicate significant changes in the original CSP projection in either dollars or percentage of completion. Identify the change, the reasons for the change, whether there is any projected overrun, and when additional funds would be required. If there have been no changes to the original NRC-approved CSP projections, a written statement to that effect is sufficient in lieu of submitting a detailed response to item ''h''.

(i) Property status:

(1) List property acquired for the project during the month with an acquisition cost between $500 and $49,999. Give the item number for the specific piece of equipment.

(2) Provide a separate list of property acquired for the project during the month with an acquisition cost of $50,000 or more. Provide the following information for each item of property: item description or nomenclature, manufacturer, model number, serial number, acquisition cost, and receipt date. If no property was acquired during the month, include a statement to that effect. The same

information must be provided for any component or peripheral equipment which is part of a ''system or system unit.''

(3) For multi-year projects, in the September monthly financial status report provide a cumulative listing of property with an acquisition cost of $50,000 or more showing the information specified in paragraph (i)(2) of this clause.

(4) In the final financial status report provide a closeout property report containing the same elements as described above for the monthly financial status reports, for all property purchased with NRC funds regardless of value unless title has been vested in the contractor. If no property was acquired under the contract, provide a statement to that effect. The report should note any property requiring special handling for security, health, safety, or other reasons as part of the report.

(j) Travel status. List the starting and ending dates for each trip, the starting point and destination, and the traveler(s) for each trip.

(k) If the data in this report indicates a need for additional funding beyond that already obligated, this information may only be used as support to the official request for funding required in accordance with the Limitation of Cost (LOC) Clause (FAR 52.232–20) or the Limitation of Funds (LOF) Clause FAR 52.232–22.

(End of clause)

Alterate 1 (OCT 1999). As prescribed in 2011.104–70(c), the contracting officer shall insert the following clause in applicable cost reimbursement solicitations and contracts when no contractor spending plan is required:

FINANCIAL STATUS REPORT—ALTERNATE 1 (OCT 1999)

The contractor shall provide a monthly Financial Status Report (FSR) to the Project Officer and the contracting officer. The FSR shall include the acquisition of, or changes in the status of, contractor-held property acquired with government funds valued at the time of purchase at $50,000 or more. Whenever these types of changes occur, the contractor shall send a copy of the report to the Chief, Property and Acquisition Oversight Branch, Office of Administration. The report is due within 15 calendar days after the end of the report period and shall identify the title of the project, the contract number, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report shall include the following information for each discrete task:

(a) Total estimated contract amount.

(b) Total funds obligated to date.

(c) Total costs incurred this reporting period.

(d) Total costs incurred to date.

(e) Detail of all direct and indirect costs incurred during the reporting period for the entire contract or each task, if it is a task ordering contract.

(f) Balance of obligations remaining.

(g) Balance of funds required to complete contract/task order.

(h) Property status:

(1) List property acquired for the project during the month with an acquisition cost between $500 and $49,999. Give the item number for the specific piece of equipment.

(2) Provide a separate list of property acquired for the project during the month with an acquisition cost of $50,000 or more. Provide the following information for each item of property: item description or nomenclature, manufacturer, model number, serial number, acquisition cost, and receipt date. If no property was acquired during the month, include a statement to that effect. The same information must be provided for any component or peripheral equipment which is part of a ''system or system unit.''

(3) For multi-year projects, in the September monthly financial status report provide a cumulative listing of property with an acquisition cost of $50,000 or more showing the information specified in paragraph (h)(3) of this clause.

(4) In the final financial status report provide a closeout property report containing the same elements as described above for the monthly financial status reports, for all property purchased with NRC funds regardless of value unless title has been vested in the contractor. If no property was acquired under the contract, provide a statement to that effect. The report should note any property requiring special handling for security, health, safety, or other reasons as part of the report.

(i) Travel status: List the starting and ending dates for each trip, the starting point and destination, and the traveler(s) for each trip.

(j) If the data in this report indicates a need for additional funding beyond that already obligated, this information may only be used as support to the official request for funding required in accordance with the Limitation of Cost (LOC) Clause (FAR 52.232–20) or the Limitation of Funds (LOF) Clause FAR 52.232–22.

(End of clause)

2052.214–70 Prebid conference.

As prescribed at 2014.201–670(a), the contracting officer may insert the following provision in invitations for bids which require a prebid conference:

PREBID CONFERENCE (JAN 1993)

(a) A prebid conference is scheduled for:

Date: *
Location: *
Time: *

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than * working day(s) before the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify * by letter or telephone * , no later than close of business * . Notification of your intention to attend is essential in the event the conference is rescheduled or canceled. (Optional statement: Due to space limitations, each potential bidder is limited to * representatives at the conference.)

(c) Written questions must be submitted to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, Attn: *, Mail Stop T–7–I–2, Washington, DC 20555.

(d) The envelope must be marked ''Solicitation No. * /Prebid Conference.''

(e) A transcript of the conference will be furnished to all prospective bidders through the issuance of an amendment to the solicitation.

*To be incorporated into the solicitation.

(End of provision)

2052.214–71 Bidder qualifications and past experiences.

As prescribed in 2014.201–670(b), the contracting officer may insert the following provision on an optional basis to fit the circumstances of the invitation for bid.

BIDDER QUALIFICATIONS AND PAST EXPERIENCE (OCT 1999)

(a) The bidder shall list previous/current contracts performed within the past * years (with no omissions) in which the Bidder was the prime or principal subcontractor. This information will assist the contracting officer in his/her Determination of Responsibility. Lack of previous/current contracts or failure to submit this information will not necessarily result in an unfavorable Determination of Responsibility.

(b) The following information shall be provided for each previous/current contract listed:

(1) Contract No.:

(2) Contract performance dates:

(3) Estimated total value of the contract (base plus all option years):

(4) Brief description of work performed under the contract:

(5) Contract Standard Industrial Code:

(6) Name and address of Government agency or commercial entity:

(7) Technical Point of Contact and current telephone number:

(8) Contracting Officer name and current telephone number:

(c) The bidder shall also provide the name, title and full telephone number of its technical representative and contracts/business representative:

(1) Technical Representative name:
Title:
Telephone No.( )
(2) Contracts/Business Representative name:
Title:
Telephone No. ( )

*To be incorporated into the solicitation

(End of provision)

2052.214–72 Bid evaluation.

As prescribed at 2014.201–670(c), the contracting officer shall insert the following provision in applicable invitations for bids (paragraph ''(f)'' of this provision is optional):

BID EVALUATION (JAN 1993)

(a) Award will be made to that responsive, responsible bidder within the meaning of FAR Subpart 9.1 whose total bid amount, as set forth by the bidder in Section B of this Invitation for Bid (IFB), constitutes the lowest overall evaluated final contract price to the Government based upon the requirements for the schedule. Bids will be evaluated for purposes of award by first ascertaining the sum of the total amount for each of the items specified in Section B of this solicitation. This will constitute the bidder's ''Total Bid Amount.''

(b) Bidders shall insert a definite price or indicate ''no charge'' in the blank space provided for each item and/or sub-item listed in Section B. Unless expressly provided for in the bid, no additional charge will be allowed for work performed under the contract other than the unit prices stipulated for each item and/or sub-item.

(c) Any bid which is materially unbalanced as to price for the separate items specified in Section B of this IFB may be rejected as nonresponsive. An unbalanced bid is defined as one which is based on prices which, in the opinion of the NRC, are significantly less than cost for some work and/or prices that may be significantly overstated for other work.

(d) Separation charges, in any form, are not solicited. Bids containing charges for discontinuance, termination, failure to exercise an option, or for any other purpose will cause the bid to be rejected as nonresponsive.

(e) A preaward on-site survey of the bidder's facilities, equipment, etc., in accordance with FAR 9.105 and 9.106, may be made by representatives of the Commission for the purpose of determining whether the bidder is responsible within the meaning of FAR 9.1, and whether the bidder possesses qualifications that are conducive to the production of work that will meet the requirements, specifications, and provisions of this contract. If requested by the Commission, the prospective contractor may also be required to submit statements within * hours after receiving the request:

(1) Concerning their ability to meet any of the minimum standards set forth in FAR 9.104,

(2) Samples of work, and

(3) Names and addresses of additional clients, Government agencies, and/or commercial firms which the bidder is now doing or had done business with.

(f) Notwithstanding paragraph (b) of this section, the award of any contract resulting from this solicitation will be made on an ''all or none'' basis. Thus, bids submitted on fewer than the items listed in Section B of this IFB, or on fewer than the estimated quantity, will cause the bid to be rejected as nonresponsive.

*To be inserted into solicitation.

(End of provision)

2052.214–73 Timely receipt of bids.

As prescribed at 2014.670(b), the contracting officer shall insert the following provision in all invitations for bids:

TIMELY RECEIPT OF BIDS (OCT 1999)

Sealed offers for furnishing the services or supplies in the schedule are due at the date and time stated in block 9 of Standard Form 33, Solicitation, Offer and Award. Offers sent through the U.S. Mail (including U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee) must be addressed to the place specified in the solicitation. All hand-carried offers including those made by private delivery services (e.g., Federal Express and Airborne Express) must be delivered to the NRC loading dock security station located at 11545 Rockville Pike, Rockville, Maryland 20852 and received in the depository located in Room T–7–I–2. All offerors should allow extra time for internal mail distribution or for pick up of hand-carried deliveries. The NRC is a secure facility with perimeter access-control and NRC personnel are only available to receive hand-carried offers during normal working hours, 7:30 AM–3:30 PM, Monday through Friday, excluding Federal holidays.

(End of provision)

2052.214–74 Disposition of bids.

As prescribed at 2014.670(b), the contracting officer shall insert the following provision in applicable invitation for bids:

DISPOSITION OF BIDS (JAN 1993)

After award of the contract, one copy of each unsuccessful bid will be retained by the NRC's Division of Contracts and Property Management in accordance with the General Records Schedule 3(5)(b). Unless return of the additional copies of the bid is requested by the bidder upon submission of the bid, all other copies will be destroyed. This request should appear in a cover letter accompanying the bid.

(End of provision)

2052.215–70 Key personnel.

As prescribed at 2015.209–70(a)(1), the contracting officer shall insert in solicitations and contracts the following clause as applicable to the requirement:

KEY PERSONNEL (JAN 1993)

(a) The following individuals are considered to be essential to the successful performance of the work hereunder:

*

The contractor agrees that personnel may not be removed from the contract work or replaced without compliance with paragraphs (b) and (c) of this section.

(b) If one or more of the key personnel, for whatever reason, becomes, or is expected to become, unavailable for work under this contract for a continuous period exceeding 30 work days, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, the contractor shall immediately notify the contracting officer and shall, subject to the con currence of the contracting officer, promptly replace the personnel with personnel of at least substantially equal ability and qualifications.

(c) Each request for approval of substitutions must be in writing and contain a detailed explanation of the circumstances necessitating the proposed substitutions. The request must also contain a complete resume

for the proposed substitute and other information requested or needed by the contracting officer to evaluate the proposed substitution. The contracting officer and the project officer shall evaluate the contractor's request and the contracting officer shall promptly notify the contractor of his or her decision in writing.

(d) If the contracting officer determines that suitable and timely replacement of key personnel who have been reassigned, terminated, or have otherwise become unavailable for the contract work is not reasonably forthcoming, or that the resultant reduction of productive effort would be so substantial as to impair the successful completion of the contract or the service order, the contract may be terminated by the contracting officer for default or for the convenience of the Government, as appropriate. If the contracting officer finds the contractor at fault for the condition, the contract price or fixed fee may be equitably adjusted downward to compensate the Government for any resultant delay, loss, or damage.

*To be incorporated into any resultant contract

(End of clause)

2052.215–71 Project officer authority.

As prescribed in 2015.209–70(a)(2)(i), the contracting officer shall insert the following clause in applicable solicitations and contracts for cost-reimbursement, cost-plus-fixed-fee, cost-plus-award-fee, cost sharing, labor-hour or time-and-materials, including task order contracts. This clause and the following alternate clauses are intended for experienced, trained projects officers, and may be altered to delete duties where appropriate:

PROJECT OFFICER AUTHORITY (OCT 1999)

(a) The contracting officer's authorized representative hereinafter referred to as the project officer for this contract is:

Name: *
Address: *
Telephone Number: *

(b) Performance of the work under this contract is subject to the technical direction of the NRC project officer. The term *technical direction* is defined to include the following:

(1) Technical direction to the contractor which shifts work emphasis between areas of work or tasks, authorizes travel which was unanticipated in the Schedule (i.e., travel not contemplated in the Statement of Work or changes to specific travel identified in the Statement of Work), fills in details, or otherwise serves to accomplish the contractual statement of work.

(2) Provide advice and guidance to the contractor in the preparation of drawings, specifications, or technical portions of the work description.

(3) Review and, where required by the contract, approve technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government under the contract.

(c) Technical direction must be within the general statement of work stated in the contract. The project officer does not have the authority to and may not issue any technical direction which:

(1) Constitutes an assignment of work outside the general scope of the contract.

(2) Constitutes a change as defined in the ''Changes'' clause of this contract.

(3) In any way causes an increase or decrease in the total estimated contract cost, the fixed fee, if any, or the time required for contract performance.

(4) Changes any of the expressed terms, conditions, or specifications of the contract.

(5) Terminates the contract, settles any claim or dispute arising under the contract, or issues any unilateral directive whatever.

(d) All technical directions must be issued in writing by the project officer or must be confirmed by the project officer in writing within ten (10) working days after verbal issuance. A copy of the written direction must be furnished to the contracting officer. A copy of NRC Form 445, Request for Approval of Official Foreign Travel, which has received final approval from the NRC must be furnished to the contracting officer.

(e) The contractor shall proceed promptly with the performance of technical directions duly issued by the project officer in the manner prescribed by this clause and within the project officer's authority under the provisions of this clause.

(f) If, in the opinion of the contractor, any instruction or direction issued by the project officer is within one of the categories defined in paragraph (c) of this section, the contractor may not proceed but shall notify the contracting officer in writing within five (5) working days after the receipt of any instruction or direction and shall request that contracting officer to modify the contract accordingly. Upon receiving the notification from the contractor, the contracting officer shall issue an appropriate contract modification or advise the contractor in writing that, in the contracting officer's opinion, the technical direction is within the scope of this article and does not constitute a change under the ''Changes'' clause.

(g) Any unauthorized commitment or direction issued by the project officer may result in an unnecessary delay in the contractor's performance and may even result in the

contractor expending funds for unallowable costs under the contract.

(h) A failure of the parties to agree upon the nature of the instruction or direction or upon the contract action to be taken with respect to the instruction or direction is subject to 52.233–1—Disputes.

(i) In addition to providing technical direction as defined in paragraph (b) of the section, the project officer shall:

(1) Monitor the contractor's technical progress, including surveillance and assessment of performance, and recommend to the contracting officer changes in requirements.

(2) Assist the contractor in the resolution of technical problems encountered during performance.

(3) Review all costs requested for reimbursement by the contractor and submit to the contracting officer recommendations for approval, disapproval, or suspension of payment for supplies and services required under this contract.

(End of clause)

Alterate 1 (OCT 1999). As prescribed at 2015.209–70(a)(2)(ii), the contracting officer shall insert the following clause in solicitations and contracts which require issuance of delivery orders for specific products/services.

PROJECT OFFICER AUTHORITY—ALTERNATE 1 (OCT 1999)

(a) The contracting officer's authorized representative, hereinafter referred to as the project officer, for this contract is:

Name: *
Address: *
Telephone Number: *

(b) The project officer shall:

(1) Place delivery orders for items required under this contract up to the amount obligated on the contract award document.

(2) Monitor contractor performance and recommend changes in requirements to the contracting officer.

(3) Inspect and accept products/services provided under the contract.

(4) Review all contractor invoices/vouchers requesting payment for products/services provided under the contract and make recommendations for approval, disapproval, or suspension.

(c) The project officer may not make changes to the express terms and conditions of this contract.

*To be incorporated into any resultant contract.

(End of clause)

Alterate 2 (OCT 1999). As prescribed at 2015.209(a)(2)(iii), the contracting officer shall insert in solicitations for firm fixed price contracts, the clause at 2052.215–71 Project Officer Authority Alternate 1 which shall be used with paragraph (b)(1) deleted and the remainder of the clause renumbered.

2052.215–72 Timely receipt of proposals.

As prescribed in 2015.209–70(a)(3), the contracting officer shall insert the following provision in all solicitations:

TIMELY RECEIPT OF PROPOSALS (OCT 1999)

Sealed offers for furnishing the services or supplies in the schedule are due at the date and time stated in block 9 of Standard Form 33, Solicitation, Offer and Award. Offers sent through the U.S. Mail (including U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee) must be addressed to the place specified in the solicitation. All hand-carried offers including those made by private delivery services (e.g., Federal Express and Airborne Express) must be delivered to the NRC loading dock security station located at 11545 Rockville Pike, Rockville, Maryland 20852 and received in the depository located in Room T–7–I–2. All offerors should allow extra time for internal mail distribution or for pick up of hand-carried deliveries. The NRC is a secure facility with perimeter access-control and NRC personnel are only available to receive hand-carried offers during normal working hours, 7:30 AM—3:30 PM, Monday through Friday, excluding Federal holidays.

(End of provision)

2052.215–73 Award notification and commitment of public funds.

As prescribed at 2015.209–70 (a)(4), the contracting officer shall insert the following clause in applicable solicitations:

AWARD NOTIFICATION AND COMMITMENT OF PUBLIC FUNDS (OCT 1999)

(a) All offerors will be notified of their exclusion from the competitive range in accordance with FAR 15.503(a)(1). Under the requirements of FAR 15.503(a)(2), preliminary notification will be provided before award for small business set-aside procurements on negotiated procurements. The contracting officer shall provide written postaward notice to each unsuccessful offeror in accordance with FAR 15.503(b).

(b) The contracting officer is the only individual who can legally commit the NRC to the expenditure of public funds in connection with this procurement. This means that, unless provided in a contract document or specifically authorized by the contracting officer, NRC technical personnel may not issue contract modifications, give informal contractual commitments, or otherwise bind, commit, or obligate the NRC contractually. Informal contractual commitments include:

(1) Encouraging a potential contractor to incur costs before receiving a contract;

(2) Requesting or requiring a contractor to make changes under a contract without formal contract modifications;

(3) Encouraging a contractor to incur costs under a cost-reimbursable contract in excess of those costs contractually allowable; and

(4) Committing the Government to a course of action with regard to a potential contract, contract change, claim, or dispute.

(End of clause)

2052.215–74 Disposition of proposals.

As prescribed in 2015.209–70(a)(5), the contracting officer shall insert the following provision in all solicitations:

DISPOSITION OF PROPOSALS (JAN 1993)

After award of the contract, one copy of each unsuccessful proposal is retained by the NRC's Division of Contracts and Property Management in accordance with the General Records Schedule 3(5)(b). Unless return of the additional copies of the proposals is requested by the offeror upon submission of the proposals, all other copies will be destroyed. This request should appear in a cover letter accompanying the proposal.

(End of provision)

2052.215–75 Proposal presentation and format.

As prescribed at 2015.209–70(b)(1), the contracting officer may insert the following provision in applicable negotiated procurements for cost type solicitations. This clause may be tailored to each procurement and solicitation evaluation criteria by the contracting officer to fit the circumstances of the procurement.

PROPOSAL PRESENTATION AND FORMAT (OCT 1999)

(a) Information submitted in response to this solicitation must be typed, printed, or reproduced on letter-size paper and each copy must be legible. All information provided, including all resumes, must be accurate, truthful, and complete to the best of the offeror's knowledge and belief. The Commission will rely upon all representations made by the offeror both in the evaluation process and for the performance of the work by the offeror selected for award. The Commission may require the offeror to substantiate the credentials, education, and employment history of its employees, subcontractor personnel, and consultants, through submission of copies of transcripts, diplomas, licenses, etc.

(b) The offeror shall submit the following material which constitutes its offer, as defined by FAR 2.101, in two separate and distinct parts at the date and time specified in * of the solicitation for receipt of sealed offers.

(1) Part 1—Solicitation Package/Offer. Two (2) original signed copies of this solicitation package/offer. All applicable sections must be completed by the offeror.

(2) Part 2—Cost Proposal. One (1) original and * copies of the ''Cost Proposal.''

(i) The cost proposal shall be submitted separately from the Technical and Management Proposal or Oral Presentation and Supporting Documentation (as applicable).

(ii) The offeror's request for an exception to submitting cost or pricing data shall be made in accordance with FAR 52.215–20(a).

(iii) If the contracting officer does not grant the offeror an exception from the requirement to submit cost or pricing data, the offeror's cost proposal shall conform with the requirements of FAR 52.215–20(b). Cost information shall include pertinent details sufficient to show the elements of cost upon which the total cost is predicted in accordance with the requirement of FAR 52.215–20 (b)(1).

(iv) When the offeror's estimated cost for the proposed work exceeds $100,000 and the duration of the contract period exceeds six months, the offeror shall submit a Contractor Spending Plan (CSP) as part of its cost proposal. Guidance for completing the CSP is attached.

(v) For any subcontract discussed under the Technical and Management Proposal, or Oral Presentation Material, provide supporting documentation on the selection process, i.e., competitive vs. noncompetitive, and the cost evaluation.

(c) ''Written Technical and Management Proposal'' or ''Oral Presentation and Supporting Documentation'' (as applicable). One (1) original and * copies.

(1) The written Technical and Management Proposal or Oral Presentation and Supporting Documentation may not contain any reference to cost. Resource information, such as data concerning labor hours and categories, materials, subcontracts, travel, computer time, etc., must be included so that the offeror's understanding of the scope of work may be evaluated.

(2) The offeror shall submit in the written Technical and Management Proposal or Oral Presentation and Supporting Documentation full and complete information as set forth below to permit the Government to make a thorough evaluation and a sound determination that the proposed approach will have a reasonable likelihood of meeting the requirements and objectives of this procurement.

(3) The written Technical Proposal or Oral Presentation and Supporting Documentation must be tailored to assure that all information reflects a one-to-one relationship to the evaluation criteria.

(4) Statements which paraphrase the statement of work without communicating the specific approach proposed by the offeror, or statements to the effect that the offeror's understanding can or will comply with the statement of work may be construed as an indication of the offeror's lack of understanding of the statement of work and objectives.

(d) Written Technical or Oral Presentation and Supporting Documentation Requirements—Instructions.

*

*To be incorporated into the solicitation.

(End of provision)

Alterate 1 (OCT 1999). As prescribed at 2015.209–70(b)(2), this Alternate 1 may be used for solicitations for negotiated task orders. Include the following paragraph (iv) in place of paragraph (b)(2)(iv) of the basic provision:

(b)(2)(iv) The offeror's cost proposal shall be based on the NRC's estimated level of effort. The NRC's estimated level of effort for this procurement is approximately * professional and * clerical staff-years for the duration of this contract. This information is advisory and is not to be considered as the sole basis for the development of the staffing plan. For the purposes of the Government estimate, 2000 hours constitute a staff year. The total estimated cost proposed by the offeror is used for evaluation purposes only. Any resultant contract, except a requirements contract, contains an overall cost ceiling whereby individual task orders may be issued. The cost and fee, if any, for each task order is individually negotiated and also contains a cost ceiling.

Alternate 2 (OCT 1999). As proposed at 2015.209–70(b)(3), Alternate 2 may be used for solicitations for negotiated fixed price, labor hour, or time and materials contracts. Substitute the following paragraph (b)(2)(ii) for the paragraph (b)(2)(ii) of the basic provision, delete paragraphs (b)(2)(iii)–(iv) of the basic provision, and renumber the remaining paragraphs.

(ii) Submittal of information other than cost or pricing data shall be made in accordance with FAR 52.215–20 Alternate IV.

2052.215–76 Preproposal conference.

As prescribed at 2015.407–70(c), the contracting officer may insert the following provision in applicable solicitations which include a preproposal conference:

PREPROPOSAL CONFERENCE (JAN 1993)

(a) A preproposal conference is scheduled for:

Date: *
Location: *
Time: *

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than * working day(s) before the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify * by letter or telephone * , no later than close of business * . Notification of your intention to attend is essential in the event the conference is rescheduled or canceled. (Optional statement: Due to space limitations, each potential offeror is limited to * representatives at the conference.)

(c) Written questions must be submitted to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, Attn: *, Mail Stop T–7–I–2, Washington, DC 20555.

(d) The envelope must be marked ''Solicitation No. */Preproposal Conference.''

*To be incorporated into the solicitation.

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

(End of provision)

2052.215–77 Travel approvals and reimbursement.

As prescribed at 2015.209–70(d), the contracting officer shall insert the following clause in cost reimbursement solicitations and contracts which require travel but do not set a specific

ceiling amount on that travel. Requests for foreign travel must be submitted to the NRC 30 days in advance of the travel date.

TRAVEL APPROVALS AND REIMBURSEMENT (OCT 1999)

(a) All foreign travel must be approved in advance by the NRC on NRC Form 445, Request for Approval of Official Foreign Travel, and must be in compliance with FAR 52.247–63 Preference for U.S. Flag Air Carriers. The contractor shall submit NRC Form 445 to the NRC no later than 30 days before beginning travel.

(b) The contractor must receive written approval from the NRC Project Officer before taking travel that was unanticipated in the Schedule (i.e., travel not contemplated in the Statement of Work, or changes to specific travel identified in the Statement of Work).

(c) The contractor will be reimbursed only for travel costs incurred that are directly related to this contract and are allowable subject to the limitations prescribed in FAR 31.205–46.

(d) It is the responsibility of the contractor to notify the contracting officer in accordance with the Limitations of Cost clause of this contract when, at any time, the contractor learns that travel expenses will cause the contractor to exceed the estimated costs specified in the Schedule.

(e) Reasonable travel costs for research and related activities performed at State and nonprofit institutions, in accordance with Section 12 of Pub. L. 100–679, must be charged in accordance with the contractor's institutional policy to the degree that the limitations of Office of Management and Budget (OMB) guidance are not exceeded. Applicable guidance documents include OMB Circular A–87, Cost Principles for State and Local Governments; OMB Circular A–122, Cost Principles for Nonprofit Organizations; and OMB Circular A–21, Cost Principles for Educational Institutions.

(End of clause)

2052.215–78 Travel approvals and reimbursement—Alternate 1.

As prescribed in 2015.209–70(d), the contracting officer shall insert the following clause in cost reimbursement solicitations and contracts which include a ceiling amount on travel. Requests for foreign travel must be submitted to the NRC 30 days in advance of the travel date.

TRAVEL APPROVALS AND REIMBURSEMENT—ALTERNATE 1 (OCT 1999)

(a) Total expenditure for travel may not exceed ____ * ____ without the prior approval of the contracting officer.

(b) All foreign travel must be approved in advance by the NRC on NRC Form 445, Request for Approval of Official Foreign Travel, and must be in compliance with FAR 52.247–63 Preference for U.S. Flag Air Carriers. The contractor shall submit NRC Form 445 to the NRC no later than 30 days prior to the commencement of travel.

(c) The contractor will be reimbursed only for travel costs incurred that are directly related to this contract and are allowable subject to the limitations prescribed in FAR 31.205–46.

(d) It is the responsibility of the contractor to notify the contracting officer in accordance with the FAR Limitations of Cost clause of this contract when, at any time, the contractor learns that travel expenses will cause the contractor to exceed the travel ceiling amount identified in paragraph (a) of this clause.

(e) Reasonable travel costs for research and related activities performed at State and nonprofit institutions, in accordance with Section 12 of Pub. L. 100–679, must be charged in accordance with the contractor's institutional policy to the degree that the limitations of Office of Management and Budget (OMB) guidance are not exceeded. Applicable guidance documents include OMB Circular A–87, Cost Principles for State and Local Governments; OMB Circular A–122, Cost Principles for Nonprofit Organizations; and OMB Circular A–21, Cost Principles for Educational Institutions.

*To be incorporated into any resultant contract.

(End of clause)

2052.215–79 Contract award and evaluation of proposals.

As prescribed in 2015.209(a)(1), the contracting officer shall insert the following provision in solicitations when technical merit is more important than cost:

CONTRACT AWARD AND EVALUATION OF PROPOSALS (OCT 1999)

(a) By use of narrative and numerical (as appropriate) scoring techniques, proposals are evaluated against the evaluation factors specified in paragraph * below. These factors are listed in their relative order of importance.

(b) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose

proposal(s) represents the best value, as defined in FAR 2.101, after evaluation in accordance with the factors and subfactors in the solicitation.

(c) The Government may:

(1) Reject any or all proposals if the action is in the Government's interest.

(2) Waive informalities and minor irregularities in proposals received.

(d) The Government intends to evaluate proposals and award a contract without discussions with offerors. The Government reserves the right to seek proposal clarifications (e.g., capability issues as described in FAR 15.306(a) or minor or clerical errors as described in FAR 14.407); and hold communications as described in FAR 15.306(b)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(e) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(f) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(g) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(h) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(i) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(j) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(k) A separate cost analysis is performed on each cost proposal. To provide a common base for evaluation of cost proposals, the level of effort data must be expressed in staff hours. Where a Contractor Spending Plan (CSP) is required by other provisions of this solicitation, consideration is given to the Plan for completeness, reasonableness, and as a measure of effective management of the effort.

*To be incorporated into the solicitation.

(End of provision)

Alterate 1 (OCT 1999). As prescribed at 2015.209–70(e)(2), Alternate 1 may be used when proposals are to be evaluated on a lowest price, technically acceptable basis. Substitute the following paragraph for paragraph (b) in the clause at 2052.215–79:

(b) Although technical merit in the evaluation criteria set forth below is a factor in the evaluation of proposals, award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors,

Alternate 2 (OCT 1999). As prescribed at 2015.209–70(e)(2), Alternate 2 may be used when cost and technical merit are of equal significance. Substitute the following paragraph for paragraph (b) in the clause at 2052.215–79:

(b) In the selection of a contractor, technical merit in the evaluation criteria set forth below and cost bear equal significance. To be selected for an award, the proposed cost must be realistic and reasonable.

2052.216–70 Level of effort.

As prescribed at 2016.307–70(a) the contracting officer shall insert the following provision in solicitations for negotiated procurements containing labor costs other than maintenance services, to be awarded on a cost reimbursement, cost sharing, cost-plus-award-fee, cost-plus-fixed-fee, time and materials, or labor hours basis.

LEVEL OF EFFORT (JAN 1993)

The NRC's estimate of the total effort for this project is approximately * professional and * clerical staff-years for the duration of this contract. This information is advisory and is not to be considered as the sole basis for the development of the staffing plan. For the purposes of the Government estimate, 2000 hours constitute a staff year.

*To be incorporated into any resultant contract.

(End of provision)

2052.216–71 Indirect cost rates.

As prescribed at 2016.307–70(b), the contracting officer may insert the following clause in solicitations and contracts where provisional rates without ceiling apply.

INDIRECT COST RATES (JAN 1993)

(a) Pending the establishment of final indirect rates which must be negotiated based on audit of actual costs, the contractor shall be reimbursed for allowable indirect costs as follows:

*

(b) The contracting officer may adjust these rates as appropriate during the term of the contract upon acceptance of any revisions proposed by the contractor. It is the contractor's responsibility to notify the contracting officer in accordance with FAR 52.232–20, Limitation of Cost, or FAR 52.232–22, Limitation of Funds, as applicable, if these changes affect performance of work within the established cost or funding limitations.

*To be incorporated into any resultant contract.

(End of clause)

Alterate 1. As prescribed at 2016.307–70(b)(2), the contracting officer may insert the following clause in applicable solicitations and contracts where predetermined rates apply:

INDIRECT COST RATES—ALTERNATE 1 (JAN 1993)

The contractor is reimbursed for allowable indirect costs in accordance with the following predetermined rates:

*

*To be incorporated into any resultant contract.

(End of clause)

Alterate 2 (OCT 1999). As prescribed at 2016.307–70(b), the contracting officer may insert the following clause in applicable solicitations and contracts where provisional rates with ceilings apply:

INDIRECT COSTS (CEILING)—ALTERNATE 2 (OCT 1999)

(a) For this contract, the ceiling amount reimbursable for indirect costs is as follows:

*

(b) In the event that indirect rates developed by the cognizant audit activity on the basis of actual allowable costs result in a lower amount for indirect costs, the lower amount will be paid. The Government may not be obligated to pay any additional amounts for indirect costs above the ceiling rates set forth above for the applicable period.

*To be incorporated into any resultant contract.

(End of clause)

2052.216–72 Task order procedures.

As prescribed at 2016.506–70(a), the contracting officer may insert the following clause in applicable solicitations and contracts that contain task order procedures. This clause may be altered to fit the circumstances of the requirement.

TASK ORDER PROCEDURES (OCT 1999)

(a) Task order request for proposal. When a requirement within the scope of work for this contract is identified, the contracting officer shall transmit to the contractor a Task Order Request for Proposal (TORFP) which may include the following, as appropriate:

(1) Scope of work/meetings/travel and deliverables;

(2) Reporting requirements;

(3) Period of performance—place of performance;

(4) Applicable special provisions;

(5) Technical skills required; and

(6) Estimated level of effort.

(b) Task order technical proposal. By the date specified in the TORFP, the contractor shall deliver to the contracting officer a written or verbal (as specified in the TORFP technical proposal submittal instructions) technical proposal that provides the technical information required by the TORFP.

(c) Cost proposal. The contractor's cost proposal for each task order must be fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amounts. When the contractor's estimated cost for the proposed task order exceeds $100,000 and the period of performance exceeds six months, the contractor may be required to submit a Contractor Spending Plan (CSP) as part of its cost proposal. The TORP indicates if a CSP is required.

(d) Task order award. The contractor shall perform all work described in definitized task orders issued by the contracting officer. Definitized task orders include the following:

(1) Statement of work/meetings/travel and deliverables;

(2) Reporting requirements;

(3) Period of performance;

(4) Key personnel;
(5) Applicable special provisions; and
(6) Total task order amount including any fixed fee.

(End of clause)

2052.216–73 Accelerated task order procedures.

As prescribed at 2016.506–70(b), the contracting officer may insert the following clause in applicable solicitations and contracts that contain task order procedures. This clause may be altered to fit the circumstances of the requirement.

ACCELERATED TASK ORDER PROCEDURES (JAN 1993)

(a) The NRC may require the contractor to begin work before receiving a definitized task order from the contracting officer. Accordingly, when the contracting officer verbally authorizes the work, the contractor shall proceed with performance of the task order subject to the monetary limitation established for the task order by the contracting officer.

(b) When this accelerated procedure is employed by the NRC, the contractor agrees to begin promptly negotiating with the contracting officer the terms of the definitive task order and agrees to submit a cost proposal with supporting cost or pricing data. If agreement on a definitized task order is not reached by the target date mutually agreed upon by the contractor and contracting officer, the contracting officer may determine a reasonable price and/or fee in accordance with subpart 15.8 and part 31 of the FAR, subject to contractor appeal as provided in 52.233–1, Disputes. In any event, the contractor shall proceed with completion of the task order subject only to the monetary limitation established by the contracting officer and the terms and conditions of the basic contract.

(End of clause)

2052.222–70 Nondiscrimination because of age.

As prescribed at 2022.901–70, the contracting officer shall insert the following clause in all solicitations:

NONDISCRIMINATION BECAUSE OF AGE (JAN 1993)

It is the policy of the Executive Branch of the Government that:

(a) Contractors and subcontractors engaged in the performance of Federal contracts may not, in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement; and

(b) That contractors and subcontractors, or persons acting on their behalf, may not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(End of provision)

2052.227–70 Drawings, designs, specifications, and other data.

As prescribed at 2027.305–70, the contracting officer shall insert the following clause in all solicitations and contracts in which drawings, designs, specifications, and other data will be developed and the NRC must retain full rights to them (except for the contractor's right to retain a copy for its own use). When any of the clauses prescribed at FAR 27.409 are included in the solicitation and contract, this clause will not be used.

DRAWINGS, DESIGNS, SPECIFICATIONS, AND OTHER DATA (JAN 1993)

All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations, other data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the work or any part thereto, are subject to inspection by the Commission at all reasonable times. Inspection of the proper facilities must be afforded the Commission by the contractor and its subcontractors. These data are the property of the Government and may be used by the Government for any purpose whatsoever without any claim on the part of the contractor and its subcontractors and vendors for additional compensation and must, subject to the right of the contractor to retain a copy of the material for its own use, be delivered to the Government, or otherwise disposed of by the contractor as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor's right of retention and use is subject to the security, patent, and use of information provisions, if any, of this contract.

(End of clause)

2052.231–70 Precontract costs.

As prescribed in 2031.109–70, following clause may be used in all cost type contracts when costs in connection with work under the contract will be incurred by the contractor before the effective date of the contract. Approval for use of this clause must be obtained at one level above the contracting officer.

PRECONTRACT COSTS (JAN 1993)

Allowable costs under this contract include costs incurred by the contractor in connection with the work covered by this contract during the period from * and including * to the effective date of this contract that would have been allowable under the terms of this contract if this contract had been in effect during that period. However, the costs may not in aggregate exceed * which is included in the estimated cost of this contract.

*To be incorporated into any resultant contract.

(End of clause)

2052.235–70 Publication of research results.

As prescribed in 2035.70(a)(1), the contracting officer shall insert the following clause in applicable solicitations and contracts for research and development by private contractors and universities and for other technical services as appropriate.

PUBLICATION OF RESEARCH RESULTS (OCT 1999)

(a) The principal investigator(s)/contractor shall comply with the provisions of NRC Management Directive 3.8 (Vol. 3, Part 1) and NRC Handbook 3.8 (Parts I-IV) regarding publication in refereed scientific and engineering journals or dissemination to the public of any information, oral or written, concerning the work performed under this contract. Failure to comply with this clause shall be grounds for termination of this contract.

(b) The principal investigator(s)/contractor may publish the results of this work in refereed scientific and engineering journals or in open literature and present papers at public or association meetings at interim stages of work, in addition to submitting to NRC the final reports and other deliverables required under this contract. However, such publication and papers shall focus on advances in science and technology and minimize conclusions and/or recommendations which may have regulatory implications.

(c) The principal investigator(s) shall coordinate all such publications with, and transmit a copy of the proposed article or paper to, the NRC Contracting Officer or Project Officer, prior to publication. The NRC agrees to review and provide comments within thirty (30) days after receipt of a proposed publication. However, in those cases where the information to be published is (1) subject to Commission approval, (2) has not been ruled upon, or (3) disapproved by the Commission, the NRC reserves the right to disapprove or delay the publication. Further, if the NRC disagrees with the proposed publication for any reason, it reserves the right to require that any publication not identify the NRC's sponsorship of the work and that any associated publication costs shall be borne by the contractor.

(End of clause)

2052.235–71 Safety, health, and fire protection.

As prescribed in 2035.70(a)(2), the contracting officer shall insert the following clause in applicable solicitations and contracts for research and development by private contractors and universities and for other technical services as appropriate:

SAFETY, HEALTH, AND FIRE PROTECTION (JAN 1993)

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the health and safety of its employees and of members of the public, including NRC employees and contractor personnel, and to minimize danger from all hazards to life and property. The contractor shall comply with all applicable health, safety, and fire protection regulations and requirements (including reporting requirements) of the Commission and the Department of Labor. If the contractor fails to comply with these regulations or requirements, the contracting officer may, without prejudice to any other legal or contractual rights of the Commission, issue an order stopping all or any part of the work. Thereafter, a start work order for resumption of work may be issued at the discretion of the contracting officer. The contractor may not make a claim for an extension of time or for compensation or damages by reason of, or in connection with, this type of work stoppage.

(End of clause)

2052.242–70 Resolving differing professional views.

As prescribed in 2042.570–1, the contracting officer shall insert the following clause in the body of cost reimbursement solicitations and contracts for professional services, as appropriate. This clause may not be altered by the contracting officer.

RESOLVING NRC CONTRACTOR DIFFERING PROFESSIONAL VIEWS (DPVS) (DATE)

(a) The Nuclear Regulatory Commission's (NRC) policy is to support the contractor's expression of professional health and safety related concerns associated with the contractor's work for NRC that may differ from a prevailing NRC staff view, disagree with an NRC decision or policy position, or take issue with proposed or established agency practices. An occasion may arise when an NRC contractor, contractor's personnel, or subcontractor personnel believes that a conscientious expression of a competent judgement is required to document such concerns on matters directly associated with its performance of the contract. The NRC's policy is to support these instances as Differing Professional Views (DPVs).

(b) The procedure that will be used provides for the expression and resolution of differing professional views (DPVs) of health and safety related concerns associated with the mission of the agency by NRC contractors, contractor personnel or subcontractor personnel on matters directly associated with its performance of the contract. This procedure may be found in Attachments to this document. The contractor shall provide a copy of the NRC DPV procedure to all of its employees performing under this contract and to all subcontractors who shall, in turn, provide a copy of the procedure to its employees. The prime contractor or subcontractor shall submit all DPV's received but need not endorse them.

(End of clause)

2052.242–71 Procedures for Resolving Differing Professional Views.

As prescribed in 2042.570–2(b), the contracting officer shall include the following clause as an attachment to cost reimbursement solicitations and contracts for professional services, as appropriate. This clause may not be altered by the contracting officer.

PROCEDURES FOR RESOLVING NRC CONTRACTOR DIFFERING PROFESSIONAL VIEWS (DPVS) (OCT 1999)

(a) The following procedure provides for the expression and resolution of differing professional views (DPVs) of health and safety related concerns of NRC contractors and contractor personnel on matters connected to the subject of the contract. Subcontractor DPVs must be submitted through the prime contractor. The prime contractor or subcontractor shall submit all DPV's received but need not endorse them.

(b) The NRC may authorize up to eight reimbursable hours for the contractor to document, in writing, a DPV by the contractor, the contractor's personnel, or subcontractor personnel. The contractor shall not be entitled to any compensation for effort on a DPV which exceeds the specified eight hour limit.

(c) Before incurring costs to document a DPV, the contractor shall first determine whether there are sufficient funds obligated under the contract which are available to cover the costs of writing a DPV. If there are insufficient obligated funds under the contract, the contractor shall first request the NRC contracting officer for additional funding to cover the costs of preparing the DPV and authorization to proceed.

(d) Contract funds shall not be authorized to document an allegation where the use of this NRC contractor DPV process is inappropriate. Examples of such instances are: allegations of wrongdoing which should be addressed directly to the NRC Office of the Inspector General (OIG), issues submitted anonymously, or issues raised which have already been considered, addressed, or rejected, absent significant new information. This procedure does not provide anonymity. Individuals desiring anonymity should contact the NRC OIG or submit the information under NRC's Allegation Program, as appropriate.

(e) When required, the contractor shall initiate the DPV process by submitting a written statement directly to the NRC Office Director or Regional Administrator responsible for the contract, with a copy to the Contracting Officer, Division of Contracts and Property Management, Office of Administration. Each DPV submitted will be evaluated on its own merits.

(f) The DPV, while being brief, must contain the following as it relates to the subject matter of the contract:

(1) A summary of the prevailing NRC view, existing NRC decision or stated position, or the proposed or established NRC practice.

(2) A description of the submitter's views and how they differ from any of the above items.

(3) The rationale for the submitter's views, including an assessment based on risk, safety and cost benefit considerations of the consequences should the submitter's position not be adopted by NRC.

(g) The Office Director or Regional Administrator will immediately forward the submittal to the NRC DPV Review Panel and acknowledge receipt of the DPV, ordinarily within five (5) calendar days of receipt.

(h) The panel will normally review the DPV within seven calendar days of receipt to determine whether enough information has been supplied to undertake a detailed review of the issue. Typically, within 30 calendar days of receipt of the necessary information to begin a review, the panel will provide a written report of its findings to the Office Director or Regional Administrator and to the Contracting Officer, which includes a recommended course of action.

(i) The Office Director or Regional Administrator will consider the DPV Review Panel's report, make a decision on the DPV and provide a written decision to the contractor and the Contracting Officer normally within seven calendar days after receipt of the panel's recommendation.

(j) Subsequent to the decision made regarding the DPV Review Panel's report, a summary of the issue and its disposition will be included in the NRC Weekly Information Report submitted by the Office Director. The DPV file will be retained in the Office or Region for a minimum of one year thereafter. For purposes of the contract, the DPV shall be considered a deliverable under the contract. Based upon the Office Director or Regional Administrator's report, the matter will be closed.

(End of clause)

PARTS 2053–2099 [RESERVED]

CHAPTER 21—OFFICE OF PERSONNEL MANAGEMENT, FEDERAL EMPLOYEES GROUP LIFE INSURANCE FEDERAL ACQUISITION REGULATION

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SUBCHAPTER A—GENERAL

PART 2100 [RESERVED]

PART 2101—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 2101.1—Purpose, Authority, Issuance

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Subpart 2101.3—Agency Acquisition Regulations

2101.301 Policy.
2101.370 Effective date of LIFAR amendments.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40372, July 28, 1993, unless otherwise noted.

Subpart 2101.1—Purpose, Authority, Issuance

2101.101 Purpose.

(a) This subpart establishes Chapter 21, Office of Personnel Management Federal Employees' Group Life Insurance Federal Acquisition Regulation, within title 48, the Federal Acquisition Regulations System, of the Code of Federal Regulations. The short title of this regulation shall be LIFAR.

(b) The purpose of the LIFAR is to implement and supplement the Federal Acquisition Regulation (FAR) specifically for acquiring and administering a contract, or contracts, for life insurance under the Federal Employees' Group Life Insurance (FEGLI) Program.

2101.102 Authority.

(a) The LIFAR is issued by the Director of the Office of Personnel Management in accordance with the authority of 5 U.S.C. Chapter 87 and other applicable laws and regulations.

(b) The LIFAR does not replace or incorporate regulations found at 5 CFR part 870, which provide the substantive policy guidance for administration of the FEGLI Program under 5 U.S.C. chapter 87. The following is the order of precedence in interpreting a contract provision under the FEGLI Program:

(1) 5 U.S.C. chapter 87.
(2) 5 CFR part 870.
(3) 48 CFR chapters 1 and 21.
(4) The FEGLI Program contract.

[58 FR 40372, July 28, 1993, as amended at 70 FR 41149, July 18, 2005]

2101.103 Applicability.

The FAR is generally applicable to contracts negotiated in the FEGLI Program pursuant to 5 U.S.C. chapter 87. The LIFAR implements and supplements the FAR where necessary to identify basic and significant acquisition policies unique to the FEGLI Program.

2101.104 Issuance.

2101.104–1 Publication and code arrangement.

(a) The LIFAR and its subsequent changes are published in:

(1) Daily issues of the FEDERAL REGISTER; and

(2) The Code of Federal Regulations, in cumulative form.

(b) The LIFAR is issued as chapter 21 of title 48 of the Code of Federal Regulations.

2101.104–2 Arrangement of regulations.

(a) *General*. The LIFAR conforms with the arrangement and numbering system prescribed by FAR 1.104 and 1.303. However, when a FAR part or subpart is adequate for use without further OPM implementation or supplementation, there will be no corresponding LIFAR part, subpart, etc. The LIFAR is to be used in conjunction with the FAR and the order for use is:

(1) FAR;

(2) LIFAR.

(b) *Citation*. (1) In formal documents, such as legal briefs, citation of Chapter

21 material that has been published in the FEDERAL REGISTER will be to title 48 of the Code of Federal Regulations.

(2) In informal documents, any section of chapter 21 may be identified as ''LIFAR'' followed by the section number.

Subpart 2101.3—Agency Acquisition Regulations

2101.301 Policy.

(a) Procedures, contract clauses, and other aspects of the acquisition process for contracts in the FEGLI Program shall be consistent with the principles of the FAR. Changes to the FAR that are otherwise authorized by statute or applicable regulation, dictated by the practical realities associated with certain unique aspects of life insurance, or necessary to satisfy specific needs of the Office of Personnel Management, to the extent not otherwise regulated in the FAR, shall be implemented as amendments to the LIFAR and published in the FEDERAL REGISTER, or as deviations to the FAR in accordance with FAR subpart 1.4.

(b) OPM may issue internal procedures, instructions, directives, and guides to clarify or implement the LIFAR within OPM. Clarifying or implementing procedures, instructions, directives, and guides issued pursuant to this section of the LIFAR must:

(1) Be consistent with the policies and procedures contained in this chapter as implemented and supplemented from time to time; and

(2) Follow the format, arrangement, and numbering system of this chapter to the extent practicable.

[58 FR 40372, July 28, 1993, as amended at 70 FR 41149, July 18, 2005]

2101.370 Effective date of LIFAR amendments.

(a) Except as provided in paragraphs (b) and (c) of this section, an amendment to the LIFAR is effective when promulgated or as provided in the amendment.

(b) Except as provided in paragraphs (c) and (d) of this section, if the LIFAR is amended in a manner which would increase the contractor's(s') costs or liabilities under the contract(s), the amendment will be made effective the October 1 subsequent to the amendment's promulgation, unless the contractor(s) agree(s) in writing to an earlier date.

(c) Except as provided for in paragraph (d) of this section, if the LIFAR is amended between July 31 and October 1 in a manner which would increase the contractor's(s') costs or liabilities under the contract(s), the amendment will not be effective until the October 1 in the year following the amendment's promulgation, unless the contractor(s) agree(s) in writing to an earlier date.

(d) Paragraphs (b) and (c) of this section are not applicable to amendments that are necessary to implement new or existing legislation.

(e) OPM will not initiate any changes to the LIFAR during a continuity of services period, as discussed in section 2152.237–70 of this chapter.

[58 FR 40372, July 28, 1993, as amended at 70 FR 41149, July 18, 2005]

PART 2102—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2102.1—Definitions

2102.101 Definitions.

In this chapter, unless otherwise indicated, the following terms have the meaning set forth in this subpart.

Contract means a policy or policies of group life and accidental death and dismemberment insurance to provide the benefits specified by 5 U.S.C. chapter 87.

Contractor means an insurance company contracted to provide the benefits specified by 5 U.S.C. chapter 87.

Contract price means premium.

Contract year means October 1 through September 30. Also referred to as contract term.

Director means the Director of the Office of Personnel Management.

Employees' Life Insurance Fund means the trust fund established under 5 U.S.C. 8714.

Enrollee means the insured, or, where applicable, the assignee.

FEGLI Program means the Federal Employees' Group Life Insurance Program.

Fixed price with limited cost redetermination plus fixed fee contract means a contract which provides for:

(1) A fixed price during the contract year with a cost element that is adjusted at the end of the contract term based on costs incurred under the contract; and

(2) A profit or fee that is fixed at the beginning of the contract term. The amount of adjustment for costs is limited to the amount in the Employees' Life Insurance Fund. The fee will be in the form of either a risk charge or a service charge.

Grace period means 31 days from and including the payment due date of the first business day of the month.

Insurance company, as provided in 5 U.S.C. 8709, means a company licensed to transact life and accidental death and dismemberment insurance under the laws of all the States and the District of Columbia. It must have in effect, on the most recent December 31 for which information is available to the Office of Personnel Management, an amount of employee group life insurance equal to at least 1 percent of the total amount of employee group life insurance in the United States in all life insurance companies.

OPM means the United States Office of Personnel Management.

Premium means an amount intended to cover the estimated annual benefits and administrative costs plus a fixed service or risk charge, made available to the Contractor in 12 equal installments. At the end of the contract year, a reconciliation of premiums, benefits, and other costs is performed as a limited cost redetermination.

Reinsurer means a company that reinsures portions of the total amount of insurance under the contract as specified in 5 U.S.C. 8710 and is not an agent or representative of the Contractor.

Subcontract means a contract entered into by any subcontractor that furnishes supplies or services for performance of a prime contract under the FEGLI Program. Except for the purpose of FAR subpart 22.8—Equal Employment Opportunity, the term subcontract does not include a contract with a reinsurer under the FEGLI Program.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor under the FEGLI Program contract. Except for the purpose of FAR subpart 22.8—Equal Employment Opportunity, the term subcontractor does not include reinsurers under the FEGLI Program.

[70 FR 41149, July 18, 2005]

PART 2103—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2103.5—Other Improper Business Practices

Sec.
2103.570 Misleading, Deceptive, or Unfair Advertising.
2103.571 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40373, July 28, 1993, unless otherwise noted.

Subpart 2103.5—Other Improper Business Practices

2103.570 Misleading, Deceptive, or Unfair Advertising.

(a) OPM, or the Contractor with the approval of OPM, makes available to Federal employees a booklet describing the provisions of the FEGLI Program, which includes information about eligibility, enrollment, and general procedures. The booklet, along with valid election documents, serves as certification of the employee's coverage under the FEGLI Program. Any marketing/advertising directed specifically at Federal employees and life insurance contacts with Federal employees for the purpose of selling FEGLI Program coverage must be approved by OPM in advance.

(b) The Contractor is prohibited from making incomplete and/or incorrect comparisons or using disparaging or minimizing techniques to compare its other products or services to those of the FEGLI Program. The Contractor agrees that any advertising material

authorized and released by the Contractor which mentions the FEGLI Program will be truthful and not misleading and will present an accurate statement of FEGLI Program benefits. The Contractor will use reasonable efforts to assure that agents selling its other products are aware of and abide by this prohibition.

(c) The contractor's failure to conform to the requirements of this subpart shall be considered by OPM in the determination of the service charge prenegotiation objective.

[58 FR 40373, July 28, 1993, as amended at 70 FR 41150, July 18, 2005]

2103.571 Contract clause.

The clause at 2152.203–70 shall be inserted in FEGLI Program contracts and in subcontracts.

PART 2104—ADMINISTRATIVE MATTERS

Subpart 2104.7—Contractor Records Retention

Sec.

2104.703 Policy.

Subpart 2104.9—Taxpayer Identification Number

2104.9001 Contract clause.

Subpart 2104.70—Designation of Authorized Personnel

2104.7001 Designation of authorized personnel.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40373, July 28, 1993, unless otherwise noted.

Subpart 2104.7—Contractor Records Retention

2104.703 Policy.

In view of the unique payment schedules of FEGLI Program contracts and the compelling need for records retention periods sufficient to protect the Government's interest, contractors shall be required to maintain records for periods determined in accordance with the provisions of FAR 4.703(b)(1) and LIFAR 2115.106–270.

Subpart 2104.9—Taxpayer Identification Number

2104.9001 Contract clause.

The clause at 2152.204–70 of this chapter must be inserted in all FEGLI Program contracts.

[70 FR 41150, July 18, 2005]

Subpart 2104.70—Designation of Authorized Personnel

2104.7001 Designation of authorized personnel.

The contractor shall notify the contracting officer in writing of the name(s), title(s), and address(es) of the individual(s) authorized to act on behalf of the contractor regarding a LIFAR Program contract. The notice shall include any restriction(s) upon the authority of the individual(s). Any change to the notice must also be provided to the contracting officer in writing.

SUBCHAPTER B—ACQUISITION PLANNING

PART 2105—PUBLICIZING CONTRACT ACTIONS

AUTHORITY: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2105.70—Applicability

2105.7001 Applicability.

FAR part 5 has no practical application to the FEGLI Program because the requirements for eligible contractors (i.e., qualified life insurance companies) are stated in 5 U.S.C. 8709.

[70 FR 41150, July 18, 2005]

PART 2106—COMPETITION REQUIREMENTS

AUTHORITY: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2106.70—Applicability

2106.7001 Applicability.

FAR part 6 has no practical application to the FEGLI Program because 5 U.S.C. chapter 87 exempts the FEGLI Program from competitive bidding.

[70 FR 41150, July 18, 2005]

PART 2109—CONTRACTOR QUALIFICATIONS

Subpart 2109.4—Debarment, Suspension, and Ineligibility

Sec.
2109.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.
2109.409 Certification and contract clause.

Subpart 2109.70—Minimum Standards for FEGLI Program Contractors

2109.7001 Minimum standards for FEGLI Program contractors.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40374, July 28, 1993, unless otherwise noted.

Subpart 2109.4—Debarment, Suspension, and Ineligibility

2109.408 Certification regarding debarment, suspension, proposed debarment and other responsibility matters.

FAR subpart 9.4 is implemented by changing the FAR offeror's certification at FAR 52.209–5 (which is part of a solicitation) to a pre-contract certificate and a contract clause. These provisions reflect the FEGLI Program's statutory exemption from competitive bidding (5 U.S.C. 8709), which obviates the issuance of solicitations.

2109.409 Certification and contract clause.

(a) The contracting officer may require the precontract certificate in 2152.209–70 to be filed prior to or during negotiations.

(b) The contracting officer shall insert the clause at 2152.209–71 in all FEGLI Program contracts.

Subpart 2109.70—Minimum Standards for FEGLI Program Contractors

2109.7001 Minimum standards for FEGLI Program contractors.

(a) The Contractor must meet the requirements of chapter 87 of title 5, United States Code; part 870 of title 5, Code of Federal Regulations; chapter 1 of title 48, Code of Federal Regulations; and the standards in this subpart. The Contractor must continue to meet these and the following statutory and regulatory requirements while under contract with OPM. Failure to meet these requirements and standards is cause for OPM's termination of the contract in accordance with part 2149 of this chapter.

(b) The contractor must actually be engaged in the life insurance business and must be licensed to transact life and accidental death and dismemberment insurance under the laws of all the States and the District of Columbia at the time of application.

(c) The contractor must not be a Federal, State, local or territorial government entity.

(d) The contractor must not be debarred, suspended or ineligible to participate in Government contracting or subcontracting for any reason.

(e) The contractor must keep statistical and financial records regarding the FEGLI Program separate from that of all its other lines of business.

(f) The Contractor agrees to enter into annual premium rate redeterminations with OPM.

(g) The Contractor must furnish such reasonable reports as OPM determines are necessary to administer the FEGLI Program. The cost of preparation of such reports will be considered an allowable expense within the administrative expense ceiling defined in section 2152.231–70 of this chapter.

(h) The contractor must establish and maintain a system of internal control that provides reasonable assurance that:

(1) The payment of claims and other expenses is in compliance with legal, regulatory, and contractual guidelines;

(2) Funds, property, and other FEGLI Program assets are safeguarded against waste, loss, unauthorized use, or misappropriation;

(3) Revenues and expenditures applicable to FEGLI Program operations are properly recorded and accounted for to permit the preparation of reliable financial reporting and to maintain accountability over assets; and,

(4) Data are accurately and fairly disclosed in all reports required by OPM.

(i) The contractor must permit representatives of OPM and of the General Accounting Office to audit and examine records and accounts pertaining to the FEGLI Program at such reasonable times and places as may be designated by OPM or the General Accounting Office.

[58 FR 40374, July 28, 1993, as amended at 70 FR 41150, July 18, 2005]

PART 2110—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Subpart 2110.70—Contract Specifications

Sec.
2110.7000 Scope of subpart.
2110.7001 Definitions.
2110.7002 Contractor investment of FEGLI Program funds.
2110.7003 Significant events.
2110.7004 Contract clauses.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40374, July 28, 1993, unless otherwise noted.

Subpart 2110.70—Contract Specifications

2110.7000 Scope of subpart.

This subpart prescribes mandatory specifications for performance under FEGLI Program contracts.

2110.7001 Definitions.

Investment income, as used in this subpart, means the net amount on an investment of FEGLI Program funds earned by the contractor after deducting reasonable, necessary, and properly allocated investment expenses.

Significant event, as used in this subpart, means any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon the contractor's ability to meet its obligations under the LIFAR.

2110.7002 Contractor investment of FEGLI Program funds.

(a) The Contractor is required to invest and reinvest all FEGLI Program funds on hand, including any attributable to the special contingency reserve (as used in 5 U.S.C. 8712), until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the Contractor must seek to maximize investment income. However, the Contractor will not be responsible for any actions taken at the direction of OPM.

(b) The Contractor is required to credit income earned from its investment of FEGLI Program funds to the FEGLI Program. Thus, the Contractor

must be able to allocate investment income to the FEGLI Program in an appropriate manner. If the Contractor fails to invest funds on hand, properly allocate investment income, or credit any income due to the contract, for whatever reason, it must return or credit any investment income lost to OPM or the FEGLI Program, retroactive to the date that such funds should have been originally invested, allocated, or credited in accordance with the clause at 2152.210–70 of this chapter.

[70 FR 41150, July 18, 2005]

2110.7003 Significant events.

The contractor is required to inform the contracting officer of all significant events.

2110.7004 Contract clauses.

(a) The clause at 2152.210–70 shall be inserted in all FEGLI Program contracts.

(b) The clause at 2152.210–71 shall be inserted in all FEGLI Program contracts.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2114—SEALED BIDDING

AUTHORITY: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2114.70—Applicability

2114.7001 Applicability.

FAR part 14 has no practical application to the FEGLI Program because 5 U.S.C. chapter 87 exempts the FEGLI Program from competitive bidding.

[70 FR 41151, July 18, 2005]

PART 2115—CONTRACTING BY NEGOTIATION

Sec.
2115.070 Negotiation authority.
2115.071 Specific retention periods: Contract clause.

Subpart 2115.1—Source Selection Processes and Techniques

2115.170 Applicability.

Subpart 2115.2—Solicitation and Receipt of Proposals and Information

2115.270 Applicability.

Subpart 2115.3—Source Selection

2115.370 Applicability.

Subpart 2115.4—Contract Pricing

2115.402 Policy.
2115.404–70 Profit.
2115.404–71 Profit analysis factors.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40375, July 28, 1993, unless otherwise noted.

2115.070 Negotiation authority.

The authority to negotiate FEGLI Program contracts is conferred by 5 U.S.C. 8709.

[58 FR 40375, July 28, 1993. Redesignated at 70 FR 41151, July 18, 2005]

2115.071 Specific retention periods: Contract clause.

Unless the contracting officer determines that there exists a compelling reason to include only the contract clause specified by FAR 52.215–2, ''Audit—Negotiation,'' the contracting officer shall also insert the clause at 2152.215–70 in all FEGLI Program contracts.

[58 FR 40375, July 28, 1993. Redesignated at 70 FR 41151, July 18, 2005]

Subpart 2115.1—Source Selection Processes and Techniques

2115.170 Applicability.

FAR subpart 15.1 has no practical application to the FEGLI Program because prospective contractors (insurance companies) are considered for inclusion in the FEGLI Program in accordance with criteria provided in 5 U.S.C. chapter 87, LIFAR 2109.7001, and LIFAR 2115.370.

[70 FR 41151, July 18, 2005]

Subpart 2115.2—Solicitation and Receipt of Proposals and Quotations

2115.270 Applicability.

(a) FAR subpart 15.2 has no practical application to the FEGLI Program because 5 U.S.C. chapter 87 exempts the FEGLI Program from competitive bidding.

(b) OPM will announce any opportunities to submit applications to provide life insurance through the FEGLI Program in insurance industry periodicals and other publications as deemed appropriate by OPM. The announcement will contain information on the address to which requests for application packages should be submitted and on deadline dates for submission of completed applications.

(c) Eligible contractors (i.e., qualified life insurance companies) are identified in accordance with 5 U.S.C. 8709. Prospective contractors voluntarily come

forth in accordance with procedures provided in section 2115.370.

(d) OPM may approve one or more life insurance companies that, in its judgment, are best qualified to provide life insurance coverage to Federal enrollees.

[58 FR 40375, July 28, 1993. Redesignated and amended at 70 FR 41151, July 18, 2005]

Subpart 2115.3—Source Selection

2115.370 Applicability.

FAR subpart 15.3 has no practical application to the FEGLI Program because prospective contractors (insurance companies) are considered for inclusion in the FEGLI Program in accordance with criteria provided in 5 U.S.C. chapter 87, LIFAR 2109.7001, and the following:

(a) Applications must be signed by an individual with legal authority to enter into a contract on behalf of the company for the dollar level of claims and expenses anticipated.

(b) Applications will be reviewed for evidence of substantial compliance in the following areas:

(1) *Management:* Stable management with experience pertinent to the life insurance industry and, in particular, large group management; sufficient operating experience to enable OPM to evaluate past and expected future performance.

(2) *Marketing:* Past ability to attract and retain large group contracts; steady or increasing amount of group life insurance in force.

(3) *Legal expertise:* Demonstrated competence in researching, compiling, and implementing various Federal and State laws that may impact payment of benefits; ability to defend legal challenges to payment of benefits.

(4) *Financial condition:* Establishment of firm budget projections and demonstrated success in keeping costs at or below those projections on a regular basis; evidence of the ability to sustain operations in the future and to meet obligations under the contract OPM might enter into with the company; adequate reserve levels; assets exceeding liabilities.

(5) *Establishment of office:* Ability to establish an administrative office capable of assessing, tracking, and paying claims.

(6) *Internal controls:* Ability to establish and maintain a system of internal control that provides reasonable assurance that the payment of claims and other expenses will be in compliance with legal, regulatory, and contractual guidelines; funds, property, and other FEGLI Program assets will be safeguarded against waste, loss, unauthorized use, or misappropriation; and revenues and expenditures applicable to FEGLI Program operations will be properly recorded and accounted for to permit the preparation of timely and accurate financial reporting and to maintain accountability over assets.

[58 FR 40375, July 28, 1993. Redesignated and amended at 70 FR 41151, July 18, 2005]

Subpart 2115.4—Contract Pricing

2115.402 Policy.

Pricing of FEGLI Program premium rates is governed by 5 U.S.C. 8707, 8708, 8711, 8714a, 8714b, and 8714c. FAR subpart 15.4 will be implemented by applying cost analysis policies and procedures. To the extent that reasonable or good faith actuarial estimates are used for pricing, such estimates will be deemed acceptable and, if inaccurate, will not constitute defective pricing.

[70 FR 41151, July 18, 2005]

2115.404–70 Profit.

(a) *Risk charge.* (1) Section 8711(d) of title 5, United States Code, provides for payment of a risk charge to FEGLI Program contractors as compensation for the risk assumed under the FEGLI Program. It is appropriate to pay such a charge when substantial risk is borne by the contractor; that is, when the balance in the Employees' Life Insurance Fund is no larger than five times annual claims.

(2) The risk charge is determined by agreement between the contractor and OPM. The amount of risk charge shall be specified in the contract.

(b) *Waiver of the risk charge.* (1) When the Fund balance is greater than five times annual claims, OPM and the contractor may agree that the contractor will relinquish the risk charge in favor of a profit opportunity in the form of a

service charge for the contractor. The service charge so determined shall be the total service charge that may be negotiated for the contract and shall encompass any service charge (whether entitled service charge, profit, fee, contribution to surpluses, etc.) that may have been negotiated by the prime contractor with any subcontractor. At no time may both a risk charge and a service charge be paid for the same portion of a policy year.

(2) Once agreement to relinquish the risk charge is made, the agreement may not be cancelled unless OPM and the Contractor mutually agree to reinstitute payment of a risk charge; or unless the Fund balance falls below the level defined in 2115.404–70(a) and 30 days' notice of cancellation is provided; or unless the Contractor or OPM provides notice of cancellation for any reason 1 year prior to the date cancellation is sought.

(c) Any profit prenegotiation objective (service charge) will be determined on the basis of a weighted guidelines structured approach.

[58 FR 40375, July 28, 1993. Redesignated and amended at 70 FR 41151, July 18, 2005]

2115.404–71 Profit analysis factors.

(a) The OPM Contracting Officer will apply a weighted guidelines method when developing the prenegotiation objective (service charge) for the FEGLI Program contract. In accordance with the factors defined in FAR 15.404–4(d), OPM will apply the appropriate weights derived from the ranges specified in paragraph (b) of this section and will determine the prenegotiation objective based on the total dollar amount of the Contractor's Basic and Option C (family optional insurance) claims paid in the previous contract year.

(1) *Contractor performance.* OPM will consider such elements as the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, effectiveness of internal controls systems in place, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress as measures of economical and efficient contract performance. This factor will be judged apart from the Contractor's *basic* responsibility for contract compliance and will be a measure of the extent and nature of the Contractor's contribution to the FEGLI Program through the application of managerial expertise and effort. Evidence of effective contract performance will receive a plus weight, and poor performance or failure to comply with contract terms and conditions a zero weight. Innovations of benefit to the FEGLI Program will generally receive a plus weight; documented inattention or indifference to effective operations, a zero weight.

(2) *Contract cost risk.* OPM will evaluate the Contractor's risk annually in relation to the amount in the Employees' Life Insurance Fund and will evaluate this factor accordingly.

(3) *Federal socioeconomic programs.* OPM will consider documented evidence of successful Contractor-initiated efforts to support such Federal socioeconomic programs as drug and substance abuse deterrents and other concerns of the type enumerated in FAR 15.404–4(d)(1)(iii) as a factor in negotiating profit. This factor will be related to the quality of the Contractor's policies and procedures and the extent of exceptional effort or achievement demonstrated. Evidence of effective support of Federal socioeconomic programs will result in a plus weight; indifference to Federal socioeconomic programs will result in a zero weight; and only deliberate failure to provide opportunities to persons and organizations that would benefit from these programs will result in a negative weight.

(4) *Capital investments.* This factor is generally not applicable to FEGLI Program contracts because facilities capital cost of money may be an allowable administrative expense. Generally, this factor will be given a weight of zero. However, special purpose facilities or investment costs of direct benefit to the FEGLI Program that are not recoverable as allowable or allocable administrative expenses may be taken into account in assigning a plus weight.

(5) *Cost control.* This factor is based on the Contractor's previously demonstrated ability to perform effectively and economically. In addition, consideration will be given to measures taken

by the Contractor that result in productivity improvements and other cost containment accomplishments that will be of future benefit to the FEGLI Program. Examples are containment of costs associated with processing claims; success at preventing waste, loss, unauthorized use, or misappropriation of FEGLI Program assets; and success at limiting and recovering erroneous benefit payments.

(6) *Independent development*. Consideration will be given to independent Contractor-initiated efforts, such as the development of a unique and enhanced customer support system, that are of demonstrated value to the FEGLI Program and for which developmental costs have not been recovered directly or indirectly through allowable or allocable administrative expenses. This factor will be used to provide additional profit opportunities based upon an assessment of the Contractor's investment and risk in developing techniques, methods, practices, etc., having viability to the Program at large. Improvements and innovations recognized and rewarded under any other profit factor cannot be considered.

(7) *Transitional services*. This factor is based on the Contractor's performance of transitional activities during a continuity of services period as described in the clause at 2152.237–70 of this chapter. These are any activities apart from the normal servicing of the contract during an active contract term. Other than for a transitional period, the weight applied to this factor for any active contract term is zero.

(b) The weight ranges for each factor to be used in the weighted guidelines approach are set forth in the following table:

Profit factor	Weight ranges
1. Contractor performance	0 to +.0005.
2. Contract cost risk	+.000001 to +.00001.
3. Federal socioeconomic programs	−.00003 to +.00003.
4. Capital investment	0 to +.00001.
5. Cost control	−.0002 to +.0002.
6. Independent development	0 to +.00003.
7. Transitional services	0 to +.0007.

[70 FR 41151, July 18, 2005]

PART 2116—TYPES OF CONTRACTS

Subpart 2116.1—Selecting Contract Types

Sec.
2116.105 Solicitation provision.

Subpart 2116.2—Fixed-Price Contracts

2116.270 FEGLI Program contracts.
2116.270–1 Contract clauses.

AUTHORITY: 5 U.S.C. 8709; 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40376, July 28, 1993, unless otherwise noted.

Subpart 2116.1—Selecting Contract Types

2116.105 Solicitation provision.

FAR 16.105 has no practical application because the statutory provisions of 5 U.S.C. chapter 87 obviate the issuance of solicitations.

Subpart 2116.2—Fixed-Price Contracts

2116.270 FEGLI Program contracts.

FEGLI Program contracts are fixed price with limited cost redetermination plus fixed fee. The premium paid to the Contractor is mutually agreed upon by OPM and the Contractor and is based on an estimate of benefits and administrative costs, plus the fixed service or risk charge, and is determined annually. Claims costs, including benefits and administrative expenses, in excess of premiums are paid up to the amount in the Employees' Life Insurance Fund. Payment for costs exceeding the amount in the Fund are the responsibility of the Contractor and reinsurers. The fee is fixed at the inception of each contract year. The fee does not vary with the actual costs but may be adjusted as a result of changes in the work to be performed under the contract. The fee is in the

form of either a risk charge or a service charge.

(a) *Risk charge.* The risk charge will be determined as prescribed in 5 U.S.C. 8711(d) and section 2115.404–70 of this chapter. It will consist of a negotiated amount which will reflect the risk assumed by the Contractor and the reinsurers and may be adjusted as a result of increased or decreased risk under the contract. When the applicable fee is a risk charge, no service charge will be paid for the same period of time.

(b) *Service charge.* The amount of the service charge will be determined using a weighted guidelines structured approach in accordance with section 2115.404–71 of this chapter and negotiated with the Contractor at the beginning of the contract term. When the applicable fee is a service charge, no risk charge will be paid for the same period of time.

[70 FR 41152, July 18, 2005]

2116.270–1 Contract clauses.

(a) The clause at 2152.216–70 shall be inserted in all FEGLI Program contracts when a risk charge is negotiated.

(b) The clause at 2152.216–71 shall be inserted in all FEGLI Program contracts when a service charge is negotiated.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2122—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

AUTHORITY: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2122.1—Basic Labor Policies

2122.170 Contract clauses.

The provisions at FAR sections 52.222–21, 52.222–22, 52–222.25 are implemented by changing the word ''offeror'' to ''Contractor'' and the word ''solicitation'' to ''contract'' wherever they appear in the text to reflect the FEGLI Program's statutory exemption from competitive bidding (5 U.S.C. 8709), which obviates the issuance of solicitations.

[58 FR 40377, July 28, 1993]

PART 2124—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2124.70—Protection of Individual Privacy

Sec.
2124.102 General.
2124.102–70 Policy.
2124.104 Contract clauses.
2124.104–70 Contract clause.

AUTHORITY: 5 U.S.C. 8716, 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40377, July 28, 1993, unless otherwise noted.

Subpart 2124.70—Protection of Individual Privacy

2124.102 General.

2124.102–70 Policy.

Records retained by FEGLI Program contractors on Federal insureds and members of their families serve the contractors' own commercial function of paying FEGLI Program claims and are not maintained to accomplish an agency function of OPM. Consequently, the records do not fall within the provisions of the Privacy Act. Nevertheless, OPM recognizes the need for the contractors to keep certain records confidential. The clause at 2152.224–70 addresses this concern.

2124.104 Contract clauses.

2124.104–70 Contract clause.

The clause at 2152.224–70 shall be inserted in all FEGLI Program contracts.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2128—BONDS AND INSURANCE

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2128.3—Insurance

2128.370 Contract clause.

The contract clause at FAR 52.228–7 is a mandatory clause in FEGLI Program contracts, except paragraph (d) is modified as follows:

(d) The Government's liability under paragraph (c) of this clause is limited to the amount available in the Employee's Life Insurance Fund. Nothing in this contract shall be construed as implying that the Government will make additional funds available later or that Congress will appropriate funds later sufficient to meet deficiencies.

[58 FR 40377, July 28, 1993]

PART 2129—TAXES

Subpart 2129.1—General

Sec.
2129.170 Policy.

Subpart 2129.3—State and Local Taxes

2129.302 Application of State and local taxes to the Government.
2129.305 State and local tax exemptions.

Subpart 2129.4—Contract Clauses

2129.401 Domestic contracts.
2129.401–70 FEGLI Program contract clauses.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40377, July 28, 1993, unless otherwise noted.

Subpart 2129.1—General

2129.170 Policy.

(a) OPM shall consider taxes as a FEGLI Program cost under 2131.205–41.

(b) For purposes of the limited cost redetermination of a FEGLI Program contract, taxes are not limited to those in effect as of the contract date, but shall include any taxes enacted, modified, or repealed, by legislative, judicial, or administrative means, during the contract year.

Subpart 2129.3—State and Local Taxes

2129.302 Application of State and local taxes to the Government.

(a) 5 U.S.C. 8714(c)(1) prohibits the imposition of taxes, fees, or other monetary payment on FEGLI Program premiums by any State, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision or governmental authority of those entities.

(b) Paragraph (a) of this section shall not be construed to exempt the contractor from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by it from business conducted under the FEGLI Program if the tax, fee, or payment is applicable to a broad range of business activity.

2129.305 State and local tax exemptions.

(a) FAR 29.305 is modified for the FEGLI Program by substituting paragraph (b) of this section in the place of paragraph (b) of FAR 29.305.

(b) *Furnishing proof of exemption.* If a reasonable basis to sustain a claimed exemption exists, the seller will be furnished evidence of exemption if requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer.

Subpart 2129.4—Contract Clauses

2129.401 Domestic contracts.

2129.401–70 FEGLI Program contract clauses.

The fixed-price contract clauses in FAR subpart 29.4 are inappropriate for the FEGLI Program because of the limited cost-redetermination of FEGLI Program contracts. The clauses at FAR 52.229–1, 52.229–2, 52.229–3, and

52.229–4 shall not be inserted into FEGLI Program contracts.

PART 2131—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 2131.1—Applicability

Sec.
2131.103 Contracts with commercial organizations.
2131.109 Advance agreements.

Subpart 2131.2—Contracts With Commercial Organizations

2131.201 General.
2131.201–5 Credits.
2131.203 Indirect costs.
2131.205 Selected costs.
2131.205–1 Public relations and advertising costs.
2131.205–3 Bad debts.
2131.205–6 Compensation for personal services.
2131.205–32 Precontract costs.
2131.205–38 Selling costs.
2131.205–41 Taxes.
2131.205–43 Trade, business, technical and professional activity costs.
2131.205–70 Major subcontractor service charge.
2131.205–71 Reinsurer administrative expense costs.
2131.270 Contract clauses.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40378, July 28, 1993, unless otherwise noted.

Subpart 2131.1—Applicability

2131.103 Contracts with commercial organizations.

The contracting officer shall incorporate the cost principles and procedures of FAR subpart 31.2 and this part by reference in all FEGLI Program contracts because of the nature of a fixed price with limited cost redetermination plus fixed fee contract.

2131.109 Advance agreements.

FAR 31.109 is applicable to FEGLI Program contracts, except that precontract costs and nonrecurring costs that exceed $100,000 will not be allowed in the absence of an advance agreement between OPM and any potential FEGLI Contractor.

[70 FR 41152, July 18, 2005]

Subpart 2131.2—Contracts With Commercial Organizations

2131.201 General.

2131.201–5 Credits.

The provisions of FAR 31.201–5 shall apply to income, rebates and other credits resulting from benefit payments that include, but are not limited to—

(a) Uncashed and returned checks.

(b) Refunds attributable to litigation with regard to payments of FEGLI Program life insurance monies.

(c) Erroneous benefit payment, refunds, overpayment, and duplicate payment recoveries.

(d) Escheatments.

2131.203 Indirect costs.

The provisions of FAR 31.203 apply to the allocation of indirect costs.

[70 FR 41152, July 18, 2005]

2131.205 Selected costs.

2131.205–1 Public relations and advertising costs.

The provisions of FAR 31.205–1 shall be modified to include the following:

(a) Costs of media messages are allowable if approved by the contracting officer and all of the following criteria are met:

(1) The primary objective of the message is to disseminate information on general health and fitness or encouraging healthful lifestyles;

(2) The costs of the contractor's messages are allocated to all underwritten and non-underwritten lines of business; and

(3) The contracting officer approves the total dollar amount of the contractor's messages to be charged to the FEGLI Program in advance of the policy year.

(b) Costs of media messages that inform enrollees about the FEGLI Program are allowable if approved by the contracting officer.

(c) In those instances where contracting officer approval of the total dollar amount is not solicited in advance, it is incumbent upon the contractor to show the contracting officer, for subsequent approval, that the costs

are reasonable and do not unduly burden the administrative cost to the contract.

(d) Costs of messages that are intended to, or which have the primary effect of, calling favorable attention to the contractor or subcontractor for the purpose of enhancing its overall image or selling its product or services are not allowable.

2131.205–3 Bad debts.

Erroneous benefit payments. If the contractor or OPM determines that a FEGLI Program benefit has been paid in error for any reason, the contractor shall make a diligent effort to recover such erroneous payment from the recipient. The contracting officer shall allow an unrecovered erroneous payment to be charged to the contract provided the contractor demonstrates that the recovery of the erroneous payment was attempted in accordance with a system that is approved under 2146.270(b) and that either a diligent effort was made to recover the erroneous overpayment or it would not be cost effective to recover the erroneous overpayment. The contractor's compliance with a system that is approved under 2146.270(b) will be deemed to be a diligent effort to recover the erroneous overpayment.

2131.205–6 Compensation for personal services.

FAR 31.205–6 is supplemented as follows: Overtime on a FEGLI Program contract normally would meet the conditions specified in FAR 22.103. Advance approval of the contracting officer is not required for overtime, extra-pay shifts, and multi-shifts.

2131.205–32 Precontract costs.

Precontract costs will be allowable in accordance with FAR part 31, but precontract costs that exceed $100,000 will not be allowable except to the extent allowable under an advance agreement negotiated in accordance with section 2131.109 of this chapter.

[70 FR 41152, July 18, 2005]

2131.205–38 Selling costs.

Selling costs are not allowable costs to FEGLI contracts except to the extent that they are attributable to conducting contract negotiations with the Government and for liaison activities involving ongoing contract administration, including the conduct of informational and enrollment activities as directed or approved by the Contracting Officer.

[70 FR 41152, July 18, 2005]

2131.205–41 Taxes.

(a) FAR 31.205–41, as modified in paragraphs (b) through (e), is applicable to contracts in the FEGLI Program.

(b) As long as 5 U.S.C. 8714(c) or other Federal law prohibits the imposition of taxes, fees, or other monetary payments on FEGLI Program premiums by any State, the District of Columbia, the Commonwealth of Puerto Rico, or any other political subdivision or governmental authority of those entities, payment of such preempted tax is an unallowable expense under FAR 31.205–41(b)(3).

(c) Paragraph (b)(1) of FAR 31.205–41 is not applicable to the FEGLI Program.

(d) Notwithstanding any other provision in FAR 31.205–41, the portion of the contractor's income or excess profits taxes allocated to the FEGLI Program, except those allocated to the risk charge or the service charge, are allowable costs under the FEGLI Program, including any income or excess profit taxes that arise from the operation of this paragraph. Income or excess profits taxes allocated to the risk charge or the service charge are not allowable costs.

(e) Notwithstanding any other provision in FAR 31.205–41, an amount equal to the ''DAC Tax'' is an allowable tax expense under FAR 31.205–41. ''DAC Tax'' means an amount equal to: (1) the amount of the contractor's Federal, state, and local income tax allocated to payments under the FEGLI Program, less (2) the amount of the contractor's Federal, state, and local income tax allocated to payments under the FEGLI Program computed without regard to the operation of 26 U.S.C. 848, which requires that certain policy acquisition expenses be capitalized over a 60- or 120-month period, plus (3) the amount of the increase, if any,

in the contractor's Federal, state, and local income tax that results from the operation of this section 2131.205–41(e).

2131.205–43 Trade, business, technical and professional activity costs.

(a) FEGLI Program contractors shall seek the advance written approval of the contracting officer for allowability of all or part of the costs associated with trade, business, technical, and professional activities when the allocable costs of such participation to the FEGLI Program will exceed $2,500 annually and the contractor allocates more than 50 percent of the membership cost of a trade, business, technical, or professional organization to the FEGLI Program.

(b) When approval of costs for membership in an organization is required, the contractor must demonstrate conclusively that membership in such an organization and participation in its activities extend beyond the contractual relationship with OPM, have a reasonable relationship to providing services to FEGLI Program insureds, and that the organization is not engaged in activities such as those cited in FAR 31.205–22 (lobbying costs) for which costs are not allowable.

2131.205–70 Major subcontractor service charge.

In a subcontract for enrollment and eligibility determinations, administration of claims and payment of benefits and any other subcontract for which prior approval is necessary, when costs are determined on the basis of actual costs incurred, any amount that exceeds the allowable cost of a major subcontract (whether entitled service charge, incentive fee, profit, fee, surplus, or any other title) is not allowable under the contract. Amounts which exceed allowable costs may be paid to a major subcontractor only from the risk charge or service charge negotiated between OPM and the contractor.

2131.205–71 Reinsurer administrative expense costs.

A charge of $500 per policy year per reinsurer of the FEGLI Program as set forth in the contract is an allowable cost when documented through an internal accounting entry of the contractor and actually paid. This amount is deemed to be sufficient to reimburse reinsurers for the minor administrative expenses incurred in reinsuring the FEGLI Program.

2131.270 Contract clauses.

The clause at 2152.231–70 shall be inserted in all FEGLI Program contracts.

PART 2132—CONTRACT FINANCING

Subpart 2132.1—General

Sec.
2132.170 Recurring premium payments to contractors.
2132.171 Contract clause.

Subpart 2132.6—Contract Debts

2132.607 Tax credit.
2132.617 Contract clause.

Subpart 2132.7—Contract Funding

2132.770 Insurance premium payments and special contingency reserve.
2132.771 Non-commingling of FEGLI Program funds.
2132.772 Contract clause.

Subpart 2132.8—Assignment of Claims

2132.806 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40379, July 28, 1993, unless otherwise noted.

Subpart 2132.1—General

2132.170 Recurring premium payments to Contractors.

(a) OPM will make payments on a letter of credit (LOC) basis. OPM and the Contractor will concur on an estimate of benefits and administrative costs plus the fixed service or risk charge for the forthcoming contract year, as specified in the contract. The annual premium to the Contractor, based on this estimate, will be credited to the Contractor's LOC account in 12 equal monthly installments due on the first business day of each month and available for drawdown. OPM will credit the Contractor's LOC account for the December payment no later than the last business day of each calendar year.

Following the close of the contract year, a reconciliation of premiums, benefits, and other costs will be performed as a limited cost redetermination. In addition, interest distribution payments will be made available for Contractor drawdown from the LOC account. The Contractor will use the LOC account in accordance with guidelines issued by OPM.

(b) Withdrawals from the LOC account for benefit costs of $5,000 or more will be made on a claims-paid basis. Withdrawals from the LOC account for benefit costs of less than $5,000 and other FEGLI Program disbursements will be made on a checks-presented basis. Under a checks-presented basis, drawdown on the LOC is delayed until the checks issued for FEGLI Program disbursements are presented to the Contractor's bank for payment.

(c) Nothing in this chapter will affect the ability of the Contractor to hold the special contingency reserve established and maintained in accordance with the terms of 5 U.S.C. 8712.

[70 FR 41153, July 18, 2005]

2132.171 Contract clause.

The clause at 2152.232–70 shall be inserted in all FEGLI Program contracts.

Subpart 2132.6—Contract Debts

2132.607 Tax credit.

FAR 32.607 has no practical application to FEGLI Program contracts. The statutory provisions at 5 U.S.C. 8707 and 8708 authorize joint enrollee and Government contributions to the Employees' Life Insurance Fund. Because the Fund is comprised of contributions by enrollees as well as the Government, contractors may not offset debts to the Fund by a tax credit that is solely a Government obligation.

2132.617 Contract clause.

The clause at FAR 52.232–17 is modified in FEGLI Program contracts to exclude the parenthetical phrase ''(net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)).''

Subpart 2132.7—Contract Funding

2132.770 Insurance premium payments and special contingency reserve.

Insurance premium payments and a special contingency reserve are made available to FEGLI Program contractors in accordance with 5 U.S.C. 8712 and 8714.

2132.771 Non-commingling of FEGLI Program funds.

(a) FEGLI Program funds must be maintained in such a manner as to be separately identifiable from other assets of the Contractor. Cash and investment balances reported on the FEGLI Program Annual Financial Report must be supported by the Contractor's books and records.

(b) This requirement may be modified by the Contracting Officer in accordance with the clause at 2152.232–71 of this chapter when adequate accounting and other controls are in effect. If the requirement is modified, such modification will remain in effect until rescinded by OPM.

[70 FR 41153, July 18, 2005]

2132.772 Contract clause.

The clause at 2152.232–71 shall be inserted in all FEGLI Program contracts.

Subpart 2132.8—Assignment of Claims

2132.806 Contract clause.

The clause set forth in 2152.232–72 shall be inserted in all FEGLI Program contracts.

PART 2133 [RESERVED]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2137—SERVICE CONTRACTING

Subpart 2137.1—Service Contracts—General

Sec.
2137.102 Policy.
2137.110 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40380, July 28, 1993, unless otherwise noted.

Subpart 2137.1—Service Contracts—General

2137.102 Policy.

(a) The services under this contract are of vital interest to the Government and must be continued without interruption in the event the contract is terminated, unless the termination occurs as a result of OPM's failure to pay premiums on a timely basis.

(b) The Contractor will be reimbursed for all reasonable phase-in and phase-out costs (i.e., costs incurred within the agreed-upon period after contract termination that result from phase-in and phase-out operations). The Contractor also will receive a risk or service charge for the full period after contract termination during which services are continued, not to exceed a pro rata portion of the risk or service charge for the final contract year. In addition, OPM will pay the Contractor an incentive amount, not to exceed the pro rata risk or service charge for the continuity of services period (LIFAR 2152.237–70), based on exceptional performance during the transition period to a new Contractor. The Contracting Officer will use the weighted guidelines method described in 2115.404–71 of this chapter in determining the incentive amount. The amount of the risk or service charge will be based upon the accurate and timely processing of benefit claims, the volume and validity of customer service complaints, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, insured individuals, beneficiaries, and Congress.

[70 FR 41153, July 18, 2005]

2137.110 Contract clause.

The clause at 2152.237–70 shall be inserted in all FEGLI Program contracts in lieu of the clause at 52.237–3 that is prescribed by FAR 37.110(c).

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2143—CONTRACT MODIFICATIONS

Subpart 2143.1—General

Sec.
2143.101 Definitions.

Subpart 2143.2—Change Orders

2143.205 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40380, July 28, 1993, unless otherwise noted.

Subpart 2143.1—General

2143.101 Definitions.

The effective date of a FEGLI contract modification is as defined in FAR 43.101, except to the extent that the definition conflicts with LIFAR 2101.370.

Subpart 2143.2—Change Orders

2143.205 Contract clause.

The clause at 2152.243–70 shall be inserted in all FEGLI Program contracts in lieu of the clauses in FAR 52.243–1 that are prescribed by FAR 43.205(a).

PART 2144—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 2144.1—General

Sec.
2144.102 Policy.

Subpart 2144.2—Consent to Subcontracts

2144.204 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40380, July 28, 1993, unless otherwise noted.

Subpart 2144.1—General

2144.102 Policy.

For all FEGLI Program contracts, the Contracting Officer's advance approval will be required on subcontracts or modifications to subcontracts when the cost of that portion of the subcontract that is charged the FEGLI Program contract exceeds $550,000 and is at least 25 percent of the total cost of the subcontract.

[70 FR 41153, July 18, 2005]

Subpart 2144.2—Consent to Subcontracts

2144.204 Contract clause.

The clause set forth at 2152.244–70 shall be inserted in all FEGLI Program contracts.

PART 2146—QUALITY ASSURANCE

Subpart 2146.2—Contract Quality Requirements

Sec.
2146.201 General.
2146.270 FEGLI Program quality assurance requirements.
2146.270–1 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40380, July 28, 1993, unless otherwise noted.

Subpart 2146.2—Contract Quality Requirements

2146.201 General.

(a) This part prescribes policies and procedures to ensure that services acquired under the FEGLI Program contract conform to the contract's quality requirements.

(b) OPM will make an initial evaluation of the Contractor's system of internal controls under the quality assurance program required by 2146.270 of this chapter and will acknowledge in writing whether or not the system is consistent with the requirements set forth in this subpart. After the initial review, subsequent periodic reviews may be limited to changes in the Contractor's internal control guidelines.

However, a limited review does not diminish the Contractor's obligation to apply the full internal control system.

[58 FR 40380, July 28, 1993, as amended at 70 FR 41153, July 18, 2005]

2146.270 FEGLI Program quality assurance requirements.

(a) The contractor shall develop and apply a quality assurance program specifying procedures for assuring contract quality, as directed by the contracting officer. At a minimum, the program should include procedures to address:

(1) Accuracy of payments and recovery of overpayments;

(2) Timeliness of payments to beneficiaries;

(3) Quality of services and responsiveness to beneficiaries;

(4) Quality of service and responsiveness to OPM; and

(5) Detection and recovery of fraudulent claims.

(b) The Contractor must prepare overpayment recovery guidelines to include a system of internal controls.

(c) The contracting officer may order the correction of a deficiency or a modification in the contractor's services and/or quality assurance program. The contractor shall take the necessary action promptly to implement the contracting officer's order. If the contracting officer orders the correction of a deficiency or a modification of the contractor's services and/or quality assurance program pursuant to this paragraph after the contract year has begun, the costs incurred in correcting the deficiency or making the modification will not be considered to the contractor's detriment in the cost control factor of the service charge [if applicable] for the following contract year. However, if there is a deficiency, the deficiency itself may be taken into consideration.

[58 FR 40380, July 28, 1993, as amended at 70 FR 41153, July 18, 2005]

2146.270–1 Contract clause.

The clause at 2152.246–70 shall be inserted in all FEGLI Program contracts.

PART 2149—TERMINATION OF CONTRACTS

Sec.
2149.002 Applicability.

Subpart 2149.5—Contract Termination Clauses

2149.505 Other termination clauses.
2149.505–70 FEGLI Program contract termination clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40380, July 28, 1993, unless otherwise noted.

2149.002 Applicability.

(a) *Termination.* (1) Termination of FEGLI Program contracts is controlled by 5 U.S.C. 8709(c) and this chapter. The procedures for termination of FEGLI Program contracts are contained in FAR part 49. For the purpose of this part, terminate means to discontinue as used in 5 U.S.C. 8709(c).

(2) A life insurance contract entered into by OPM may be terminated by OPM at any time for default by the Contractor in accordance with the provisions of FAR part 49 and FAR 52.249–8. A life insurance contract entered into by OPM may be terminated by the Contractor at the end of the grace period, after default for nonpayment by OPM. Notwithstanding the preceding sentence, the Contractor will allow OPM an additional 5 days after the end of the grace period to make payment if the failure to make payment was inadvertent and/or due to circumstances beyond the Government's control.

(3) A life insurance contract entered into by OPM may be terminated for convenience of the Government 60 days after the Contractor's receipt of OPM's written notice to terminate.

(4) The Contractor may terminate its contract with OPM at the end of any contract year when notice of intent to terminate is given to OPM in writing at least 60 days prior to the end of the contract year (i.e., no later than July 31).

(b) *Continuation of services.* The services under this contract are of vital interest to the Government and must be continued without interruption in the event the contract is terminated for

the Contractor's default or OPM's convenience. Consequently, the contract termination procedures contained in this paragraph must be used in conjunction with section 2137.102 of this chapter, section 2137.110 of this chapter, and the provisions of the ''Continuity of Services'' clause at 2152.237–70 of this chapter. The Contractor is not required to continue performance subsequent to OPM's default for failure to pay premiums in accordance with the provisions of the clause at 2152.249–70(b) of this chapter.

(c) *Settlement.* The procedures for settlement of contracts after they are terminated are those contained in FAR part 49.

[70 FR 41153, July 18, 2005]

Subpart 2149.5—Contract Termination Clauses

2149.505 Other termination clauses.

2149.505–70 FEGLI Program contract termination clause.

The clause in 2152.249–70 shall be inserted in all FEGLI Program contracts.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2152—PRECONTRACT PROVISIONS AND CONTRACT CLAUSES

Sec.
2152.070 Applicable clauses.

Subpart 2152.2—Text of Provisions and Clauses

2152.203–70 Misleading, deceptive, or unfair advertising.
2152.204–70 Taxpayer Identification Number.
2152.209–70 Certification regarding debarment, suspension, proposed debarment and other responsibility matters during negotiations.
2152.209–71 Certification regarding debarment, suspension, proposed debarment and other responsibility matters.
2152.210–70 Investment income.
2152.210–71 Notice of significant events.
2152.215–70 Contractor records retention.
2152.216–70 Fixed price with limited cost redetermination—risk charge.
2152.216–71 Fixed price with limited cost redetermination—service charge.
2152.224–70 Confidentiality of records.
2152.231–70 Accounting and allowable cost.
2152.232–70 Payments.
2152.232–71 Non-commingling of FEGLI Program funds.
2152.232–72 Approval for assignment of claims.
2152.237–70 Continuity of services.
2152.243–70 Changes.
2152.244–70 Subcontracts.
2152.246–70 Quality assurance requirements.
2152.249–70 Renewal and termination.

Subpart 2152.3—Provision and Clause Matrix

2152.370 Use of the matrix.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c), 48 CFR 1.301.

SOURCE: 58 FR 40381, July 28, 1993, unless otherwise noted.

2152.070 Applicable clauses.

The clauses of FAR subpart 52.2 specified below shall be applicable to FEGLI Program contracts. The most recent edition of the clause in the FAR shall be applied unless otherwise provided in the contract.

SECTION AND CLAUSE TITLE

52.202–1 Definitions
52.203–3 Gratuities
52.203–5 Covenant against Contingent Fees
52.203–6 Restrictions on Subcontractor Sales to the Government
52.203–7 Anti-Kickback Procedures
52.203–12 Limitation on Payments to Influence Certain Federal Transactions
52.209–6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
52.215–2 Audit and Records—Negotiation
52.215–10 Price Reduction for Defective Cost or Pricing Data
52.215–12 Subcontractor Cost or Pricing Data
52.215–15 Pension Adjustments and Asset Reversions
52.215–16 Facilities Capital Cost of Money
52.215–17 Waiver of Facilities Capital Cost of Money
52.215–18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions
52.219–8 Utilization of Small Business Concerns
52.222–1 Notice to the Government of Labor Disputes
52.222–3 Convict Labor
52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation
52.222–21 Prohibition of Segregated Facilities
52.222–22 Previous Contracts and Compliance Reports
52.222–25 Affirmative Action Compliance
52.222–26 Equal Opportunity
52.222–29 Notification of Visa Denial
52.222–35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
52.222–36 Affirmative Action for Workers with Disabilities
52.222–37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
52.223–6 Drug-Free Workplace
52.227–1 Authorization and Consent
52.227–2 Notice and Assistance regarding Patent and Copyright Infringement
52.228–7 Insurance—Liability to Third Persons
52.232–9 Limitation on Withholding of Payments
52.232–17 Interest
52.232–23 Assignment of Claims
52.232–33 Payment by Electronic Funds Transfer—Central Contractor Registration
52.233–1 Disputes (Alternate I)
52.242–1 Notice of Intent to Disallow Costs
52.242–3 Penalties for Unallowable Costs
52.242–13 Bankruptcy
52.244–5 Competition in Subcontracting

52.245–2 Government Property (Fixed-Price Contracts)
52.246–4 Inspection of Services—Fixed Price
52.246–25 Limitation of Liability—Services
52.247–63 Preference for U.S.-Flag Air Carriers
52.249–2 Termination for Convenience of the Government (Fixed Price)
52.249–8 Default (Fixed Price Supply and Service)
52.249–14 Excusable Delays
52.251–1 Government Supply Sources
52.252–4 Alterations in Contract
52.252–6 Authorized Deviations in Clauses

[58 FR 40381, July 28, 1993, as amended at 70 FR 41154, July 18, 2005]

Subpart 2152.2—Text of Provisions and Clauses

2152.203–70 Misleading, deceptive, or unfair advertising.

As prescribed in 2103.571, insert the following clause:

MISLEADING, DECEPTIVE, OR UNFAIR ADVERTISING (OCT 2005)

The Contractor agrees that any advertising material authorized and released by the Contractor which mentions the FEGLI Program must be truthful and not misleading and must present an accurate statement of FEGLI Program benefits. The Contractor is prohibited from making incomplete and/or incorrect comparisons or using disparaging or minimizing techniques to compare its other products or services to those of the FEGLI Program. The Contractor agrees to use reasonable efforts to assure that agents selling its other products are aware of and abide by this provision. The Contractor agrees to incorporate this clause in all subcontracts as defined at LIFAR 2102.101.

(End of clause)

[70 FR 41154, July 18, 2005]

2152.204–70 Taxpayer Identification Number.

As prescribed in 2104.9001, insert the following clause:

TAXPAYER IDENTIFICATION NUMBER (OCT 2005)

(a) *Definitions.*

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

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Contractor in reporting income tax and other returns. The TIN is the Contractor's Social Security Number.

(b) The Contractor must submit the information required in paragraphs (d) through (f) of this clause to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. The Contractor is subject to the payment reporting requirements described in FAR 4.904. The Contractor's failure or refusal to furnish the information will result in payment being withheld until the TIN is provided.

(c) The Government may use the TIN to collect and report on any delinquent amounts arising out of the Contractor's relationship with the Government (31 U.S.C. 7701(c)(3)). The TIN provided hereunder may be matched with IRS records to verify its accuracy.

(d) Taxpayer Identification Number (TIN).

TIN: _____

(e) Type of organization.

☐ Corporate entity (tax-exempt);

☐ Other _____

(f) Common parent.

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

☐ Name and TIN of common parent:

Name _____

TIN _____

(End of clause)

[70 FR 41154, July 18, 2005]

2152.209–70 Certification regarding debarment, suspension, proposed debarment and other responsibility matters during negotiations.

As prescribed in 2109.409(a), the contracting officer may require a potential contractor to provide the following certification:

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (OCT 1993)

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

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

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

(B) Have ( ) have not ( ), within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a

criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(2) of this clause.

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

(2) ''Principals,'' for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the undersigned subject to prosecution under section 1001, title 18, United States Code.

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

(c) A certification that any of the actions mentioned in paragraph (a) of this provision exists will not necessarily result in the withholding of an award under a contract under the FEGLI Program. However, the certification, or the undersigned's failure to provide such additional information as requested by the Contracting Officer will be considered in connection with a determination of the undersigned's responsibility under LIFAR subpart 2109.70, Minimum Standards for FEGLI Program Contractors.

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

(e) The certification in (a) is a material representation of fact upon which reliance is placed during negotiation of a FEGLI Program contract. If it is later determined that the undersigned knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this certification for default.

(Name of Company)

By: _____

(Signature)

_____

(Name and Title of Signatory)

Date signed: _____

(End of certificate)

2152.209–71 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

As prescribed in 2109.409(b), insert the following clause:

CERTIFICATION BY FEGLI PROGRAM CONTRACTOR REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (OCT 1993)

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

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

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

(B) Have ( ) have not ( ), within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(2) of this clause.

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

(2) ''Principals,'' for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

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

or fraudulent certification may render the Contractor subject to prosecution under section 1001, title 18, United States Code.

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

(c) A Contractor's certification that any of the actions mentioned in the certification exists will not necessarily result in termination of the contract. However, the certification, or the Contractor's failure to provide such additional information as requested by the Contracting Officer will be considered in connection with a determination of the Contractor's responsibility under LIFAR subpart 2109.70, Minimum Standards for FEGLI Program Contractors.

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

(e) The certification in this section is a material representation of fact upon which reliance is placed by the Contracting Officer in making this contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract for default.

(End of clause)

2152.210–70 Investment income.

As prescribed in 2110.7004(a), insert the following clause:

INVESTMENT INCOME (OCT 2005)

(a) The Contractor must invest and reinvest all FEGLI Program funds on hand until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the Contractor must seek to maximize investment income. However, the Contractor will not be responsible for any actions taken at the direction of OPM.

(b) All investment income earned on FEGLI Program funds shall be credited to the FEGLI Program.

(c) When the Contracting Officer concludes that the Contractor failed to comply with paragraph (a) or (b) of this clause, the Contractor must pay to OPM the investment income that would have been earned, at the rate(s) specified in paragraph (d) of this clause, had it not been for the Contractor's noncompliance. *Failed to comply with paragraph (a) or (b) of this clause* means:

(1) Making any charges against the contract which are not actual, allowable, allocable, or reasonable; or

(2) Failing to credit any income due the contract and/or failing to place funds on hand, including premium payments and payments from OPM not needed to discharge promptly the obligations incurred under the contract, tax refunds, credits, deposits, investment income earned, uncashed checks, or other amounts owed OPM in income-producing investments and accounts.

(d)(1) Investment income lost as a result of unallowable, unallocable, or unreasonable charges against the contract shall be paid from the 1st day of the contract term following the contract term in which the unallowable charge was made and shall end on the earlier of: (i) The date the amounts are returned to OPM; (ii) the date specified by the Contracting Officer; or, (iii) the date of the Contracting Officer's Final Decision.

(2) Investment income lost by the Contractor as a result of failure to credit income due under the contract or failure to place funds on hand in income-producing investments and accounts must be paid from the date the funds should have been invested or appropriate income was not credited and will end on the earlier of:

(i) The date the amounts are returned to OPM;

(ii) The date specified by the Contracting Officer; or

(iii) The date of the Contracting Officer's final decision.

(3) The Contractor shall credit to the FEGLI Program income that is due in accordance with this clause. All amounts payable shall bear lost investment income compounded semiannually at the rate established by the Secretary of the Treasury as provided in section 12 of the Contract Disputes Act of 1978 (Pub. L. 95–563), *during* the periods specified in paragraphs (d)(1) and (d)(2).

(4) All amounts due and unpaid *after* the periods specified in paragraphs (d)(1) and (d)(2) shall bear simple interest at the rate applicable for each 6-month period as fixed by the Secretary of the Treasury until the amount is paid [see FAR 32.614–1].

(End of clause)

[58 FR 40381, July 28, 1993, as amended at 70 FR 41154, July 18, 2005]

2152.210–71 Notice of significant events.

As prescribed in 2110.7004(b), insert the following clause:

NOTICE OF SIGNIFICANT EVENTS (OCT 2005)

(a) The Contractor agrees to notify OPM of any significant event within 10 working days after the Contractor becomes aware of it. As used in this section, a ''significant event'' is any occurrence of anticipated occurrence that might reasonably be expected to have a material effect upon the Contractor's ability to meet its obligations under this contract, including, but not limited to, any of the following:

(1) Disposal of 25 percent or more of the Contractor's assets within a six-month period;

(2) Termination or modification of any contract or subcontract if such termination or modification might have a material effect on the Contractor's obligations under this contract;

(3) Loss of 20 percent or more of FEGLI Program reinsurers in a contract year;

(4) The imposition of, or notice of the intent to impose, a receivership, conservatorship, or special regulatory monitoring;

(5) The withdrawal of, or notice of intent to withdraw, by any State or the District of Columbia, its license to do life insurance business or any other change of life insurance status under State law;

(6) The Contractor's material default on a loan or other financial obligation;

(7) Any actual or potential labor dispute that delays or threatens to delay timely performance or substantially impairs the functioning of the Contractor's facilities or facilities used by the Contractor in the performance of the contract;

(8) Any change in its charter, constitution, or by-laws which affects any provision of this contract or the Contractor's participation in the Federal Employees' Group Life Insurance Program;

(9) Any significant changes in policies and procedures or interpretations of the contract which would affect the benefits payable under the contract or the costs charged to the contract;

(10) Any fraud, embezzlement or misappropriation of FEGLI Program funds; or

(11) Any written exceptions, reservations, or qualifications expressed by the independent accounting firm (which ascribes to the standards of the American Institute of Certified Public Accountants) contracted with by the Contractor to provide an audit opinion on the annual financial report required by OPM for the FEGLI Program. Accounting firm employees must audit the report in accordance with Generally Accepted Government Auditing Standards or other requirements issued by OPM.

(b) Upon learning of a significant event, OPM may institute action, in proportion to the seriousness of the event, to protect the interest of insureds, including, but not limited to—

(1) Directing the Contractor to take corrective action; or

(2) Making a downward adjustment to the weight in the ''Contractor Performance'' factor of the service charge.

(c) Prior to taking action as described in paragraph (b) of this clause, OPM will notify the Contractor and offer an opportunity to respond.

(d) The Contractor agrees to insert this clause in any subcontract or subcontract modification when the amount of the subcontract or modification that is charged to the FEGLI Program contract exceeds $550,000 and is at least 25 percent of the total cost of the subcontract.

(End of clause)

[58 FR 40381, July 28, 1993, as amended at 70 FR 41155, July 18, 2005]

2152.215–70 Contractor records retention.

As prescribed in 2115.071, insert the following clause:

CONTRACTOR RECORDS RETENTION (OCT 2005)

Notwithstanding the provisions of FAR 52.215–2(f), ''Audit and Records—Negotiation,'' the Contractor must retain and make available all records applicable to a contract term that support the annual financial report for a period of 5 years after the end of the contract term to which the records relate. Claim records must be maintained for 10 years after the end of the contract term to which the claim records relate. If the Contractor chooses to maintain paper documents in electronic format, the electronic version must be an exact replica of the paper document.

(End of clause)

[70 FR 41155, July 18, 2005]

2152.216–70 Fixed price with limited cost redetermination—risk charge.

As prescribed in 2116.270–1(a), insert the following clause when a risk charge is negotiated:

FIXED PRICE WITH LIMITED COST REDETERMINATION PLUS FIXED FEE CONTRACT—RISK CHARGE (OCT 2005)

(a) This is a fixed price with limited cost redetermination plus fixed fee contract, with the fixed fee in the form of a risk charge. OPM will pay the Contractor the risk charge as specified in a letter from the Contracting Officer.

(b) At the Contractor's request, OPM will furnish, during the third quarter of the current contract year, an accounting of the funds in the Employees' Life Insurance Fund as of the end of the second quarter of the contract year.

(End of clause)

[70 FR 41155, July 18, 2005]

2152.216–71 Fixed price with limited cost redetermination—service charge.

As prescribed in 2116.270–1(b), insert the following clause when a service charge is negotiated:

FIXED PRICE WITH LIMITED COST REDETERMINATION PLUS FIXED FEE CONTRACT—SERVICE CHARGE (OCT 2005)

(a) This is a fixed price with limited cost redetermination plus fixed fee contract, with the fixed fee in the form of a service charge. OPM will pay the Contractor the service charge as specified in a letter from the Contracting Officer.

(b) At the Contractor's request, OPM will furnish, during the third quarter of the current contract year, an accounting of the funds in the Employees' Life Insurance Fund as of the end of the second quarter of the contract year.

(End of clause)

[70 FR 41155, July 18, 2005]

2152.224–70 Confidentiality of records.

As prescribed in 2124.104–70, insert the following clause:

CONFIDENTIALITY OF RECORDS (OCT 2005)

(a) The Contractor will use the personal data on employees and annuitants that is provided by agencies and OPM, including social security numbers, for only those routine uses stipulated for the data and published in the FEDERAL REGISTER as part of OPM's notice of systems of records.

(b) The Contractor shall also hold all medical records, evidence of insurability for insurance coverage, designations of beneficiaries, amounts of insurance, and information relating thereto, of the insured and family members confidential except for disclosure as follows:

(1) As may be reasonably necessary for the administration of this contract;

(2) As authorized by the insured or his or her estate;

(3) As necessary to permit Government officials having authority to investigate and prosecute alleged civil or criminal actions; and

(4) As necessary to audit the contract.

(End of clause)

[58 FR 40381, July 28, 1993, as amended at 70 FR 41155, July 18, 2005]

2152.231–70 Accounting and allowable cost.

As prescribed in 2131.270, insert the following clause:

ACCOUNTING AND ALLOWABLE COST (OCT 2005)

(a) *Annual financial report.* (1) The Contractor must prepare annually a financial report summarizing the financial operations of the FEGLI Program for the previous contract year. This report will be due to OPM in accordance with a date established by OPM's requirements.

(2) The Contractor must have the most recent financial report for the FEGLI Program audited by an independent public accounting firm that ascribes to the standards of the American Institute of Certified Public Accountants. The audit must be performed in accordance with Generally Accepted Government Auditing Standards or other requirements issued by OPM. The report by the independent accounting firm on its audit must be submitted to OPM along with the annual financial report.

(3) Based on the results of either the independent audit or a Government audit, the FEGLI contract may be:

(i) Adjusted by amounts found not to constitute chargeable costs; or

(ii) Adjusted for prior overpayments or underpayments.

(b) *Definition of costs.* (1) A cost is chargeable to the contract for a contract term if it is:

(i) An actual, allowable, allocable, and reasonable cost;

(ii) Incurred with proper justification and accounting support;

(iii) Determined in accordance with subpart 31.2 of the Federal Acquisition Regulation (FAR) and subpart 2131.2 of the Federal Employees' Group Life Insurance Acquisition Regulation (LIFAR) applicable on October 1 of each year; and

(iv) Determined in accordance with the terms of this contract.

(2) In the absence of specific contract terms to the contrary, contract costs will be classified in accordance with the following criteria:

(i) *Benefits.* Claims costs consist of payments made and costs incurred (including delayed settlement interest) by the Contractor for life insurance, accidental death and dismemberment insurance, excess mortality charges, post-mortem conversion

charges, and conversion policies on behalf of insured persons, less any overpayments recovered (subject to the terms of LIFAR 2131.205–3), refunds, or other credits received.

(ii)(A) *Administrative expenses.* Administrative expenses consist of chargeable costs as defined in paragraph (b)(1) of this clause incurred in the adjudication of claims or incurred in the Contractor's overall operation of the business. Unless otherwise provided in the contract, FAR, or LIFAR, administrative expenses include, but are not limited to, taxes, service charges to reinsurers, the cost of investigation and settlement of policy claims, the cost of maintaining records regarding payment of claims, and legal expenses incurred in the litigation of benefit payments. Administrative expenses exclude the expenses related to investment income in paragraph (b)(2)(iii) of this clause.

(B) *Administrative expense ceiling.* Each year an administrative expense ceiling for the following contract year is calculated based on the prior contract year's administrative expense ceiling, adjusted by the percentage change in the average monthly consumer Price Index for All Urban Consumers for the preceding 12 months. Administrative expenses are reimbursed up to the administrative expense ceiling or actual costs, whichever is less. Both parties will reexamine the base, including the prior year's actual expenses, at the request of either OPM or the Contractor. Within the administrative expense ceiling is a separately negotiated limit for indirect costs that may be charged against the ceiling for the contract year. The Contractor agrees to provide annually to the Contracting Officer a detailed report of direct and indirect administrative costs which form the basis for determining the limit on indirect costs for the following contract year. During a continuity of services period, OPM and the Contractor will negotiate a one-time increase in the administrative expense ceiling to cover phase-in/phase-out costs. Costs that exceed the revised ceiling must be submitted by the Contractor, in writing and in advance of their incurrence, to the Contracting Officer for approval.

(iii) *Investment income.* Investment income represents the amount earned by the Contractor after deducting chargeable investment expenses. Investment expenses are those chargeable contract costs, as defined in paragraph (b)(1) of this clause, which are attributable to the investment of FEGLI funds.

(c) *Certification of Annual Financial Report.* (1) The Contractor must certify the annual financial report in the form set forth in paragraph (c)(2) of this clause. The certificate must be signed by the chief executive officer for the Contractor's FEGLI Program operations and the chief financial officer for the Contractor's FEGLI Program operations and must be returned with the annual financial report.

(2) The certification required must be in the following form:

CERTIFICATION OF ANNUAL FINANCIAL REPORT

This is to certify that I have reviewed this financial report and, to the best of my knowledge and belief, attest that:

1. The report was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this contract year in conformity with those guidelines;

2. The costs included in the report are actual, allowable, allocable, and reasonable in accordance with the terms of the contract and with the cost principles of the Federal Employees' Group Life Insurance Program Acquisition Regulation (LIFAR) and the Federal Acquisition Regulation (FAR);

3. Income, overpayments, refunds, and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the report.

Contractor Name: _____

(Chief Executive Officer for FEGLI Operations)

Date signed: _____

(Chief Financial Officer for FEGLI Operations)

Date signed: _____

(Type or print and sign)

(End of certificate)

[70 FR 41155, July 18, 2005]

2152.232–70 Payments.

As prescribed in 2132.171, insert the following clause:

PAYMENTS (OCT 2005)

(a) OPM will make available to the Contractor, in full settlement of its obligations under this contract, subject to adjustment based on actual claims and administrative cost, a fixed premium once per month on the first business day of the month. The premium is determined by an estimate of costs for the contract year as provided in Section _____ and is redetermined annually by mutual agreement of OPM and the Contractor. In addition, an annual reconciliation of premiums, benefits, and other costs is performed, and additional payment by OPM or reimbursement by the Contractor is paid as necessary.

(b) If OPM fails to fund the Letter of Credit (LOC) account for the full amount of premium due by the due date, a grace period of 31 days will be granted to OPM for providing

any premium due, unless OPM has previously given written notice to the Contractor that the contract is to be discontinued. The contract will continue in force during the grace period.

(c) If OPM fails to fund the LOC account for any premiums within the grace period, the contract may be terminated at the end of the 31st day of the grace period in accordance with LIFAR 2149.002(a)(2). If during the grace period OPM presents written notice to the Contractor that the contract is to be terminated before the expiration of the grace period, the contract will be terminated the later of the date of receipt of such written notice by the Contractor or the date specified by OPM for termination. In either event, OPM will be liable to the Contractor for all premiums then due and unpaid.

(d) In accordance with LIFAR 2143.205 and LIFAR 2252.243–70, Changes, if a change is made to the contract that increases or decreases the cost of performance of the work under this contract, the Contracting Officer will make an equitable adjustment to the payments under this contract.

(e) In the event this contract is terminated in accordance with LIFAR part 2149, the special contingency reserve held by the Contractor will be available to pay the necessary and proper charges against this contract after other Program assets held by the Contractor are exhausted.

(End of clause)

[70 FR 41156, July 18, 2005]

2152.232–71 Non-commingling of FEGLI Program funds.

As prescribed in 2132.772, insert the following clause:

NON-COMMINGLING OF FUNDS (OCT 2005)

(a) The Contractor must maintain FEGLI Program funds in such a manner as to be separately identifiable from other assets of the Contractor.

(b) The Contractor may request a modification of paragraph (a) of this section from the Contracting Officer. The modification must be requested, and approved by the Contracting Officer, in advance of any change, and the Contractor must demonstrate that accounting techniques have been established that clearly measure FEGLI Program cash and investment income (i.e., subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records must be provided as supporting schedules to the annual financial report.

(End of clause)

[70 FR 41156, July 18, 2005]

2152.232–72 Approval for assignment of claims.

As prescribed in 2132.806, insert the following clause:

APPROVAL FOR ASSIGNMENT OF CLAIMS (OCT 1993)

(a) The Contractor shall not make any assignment of FEGLI Program funds under the Assignment of Claims Act without the prior written approval of the Contracting Officer.

(b) Unless a different period is specified in the Contracting Officer's written approval, an assignment of FEGLI Program funds shall be in force only for a period of 1 year from the date of the Contracting Officer's approval. However, assignments may be renewed upon their expiration.

(End of clause)

2152.237–70 Continuity of services.

As prescribed in 2137.110, insert the following clause:

CONTINUITY OF SERVICE (OCT 2005)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption. The Contractor further recognizes that upon contract expiration or termination, including termination by the Contractor for OPM's failure to make timely premium payments, a successor, either the Government or another Contractor, may continue them. The Contractor agrees to furnish phase-in training and exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in and phase-out services for up to 10 months after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in and phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in and phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor must allow as many experienced personnel as practicable to remain on the job during the transition period to help the successor maintain the continuity and consistency of the services required by

this contract. The Contractor also must, except if prohibited by applicable law, disclose necessary personnel records and allow the successor to conduct onsite interviews with these employees. If selected employees are agreeable to the change, the Contractor must release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor will be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract termination that result from phase-in and phase-out operations) in accordance with the provisions of the administrative expense ceiling in the clause at 2152.231–70(b)(2)(ii)(B) and a risk charge or a service charge (profit) not to exceed a pro rata portion of the risk or service charge under this contract. The amount of profit will be based upon the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress. In setting the final profit figure, obstacles overcome by the Contractor during the phase-in and phase-out period will be taken into consideration. OPM will pay an incentive amount to the Contractor not to exceed the pro rata risk or service charge for the continuity of services period, if the Contractor has performed exceptionally during the transition period to a new Contractor. The Contracting Officer uses the weighted guidelines method described in LIFAR 2115.404–71 in determining the incentive amount.

(End of clause)

[58 FR 40381, July 28, 1993, as amended at 70 FR 41157, July 18, 2005]

2152.243–70 Changes.

As prescribed in 2143.205, insert the following clause:

CHANGES (OCT 2005)

(a) Except as provided in paragraph (f) of this clause, the Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed;

(2) Time of performance (i.e., hours of the day, days of the week, etc.);

(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, or the Contractor's liability under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(f) The Contracting Officer shall not make any changes pursuant to paragraph (a) of this clause to conform this contract to any amendment in the LIFAR before the effective date of the amendment as provided for in LIFAR 2101.370.

(End of clause)

[58 FR 40381, July 28, 1993, as amended at 70 FR 41157, July 18, 2005]

2152.244–70 Subcontracts.

As prescribed by 2144.204, insert the following clause:

SUBCONTRACTS (OCT 2005)

(a) The Contractor must notify the Contracting Officer reasonably in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, when the cost of that portion of the subcontract that is charged the FEGLI Program contract exceeds $550,000 and is at least 25 percent of the total cost of the subcontract.

(b) The advance notification required by paragraph (a) of this clause shall include the following information:

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontract and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the Contractor's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and

(7) A negotiation memorandum reflecting—

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant consideration controlling establishment of initial or revised prices;

(iii) The reason cost or pricing data were or were not required;

(iv) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) of this clause. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(d) The Contracting Officer may waive the requirement for advance notification and consent required by paragraph (a), (b), and (c) of this clause where the Contractor and subcontractor submit an application or renewal as a contractor team arrangement as defined in FAR subpart 9.6 and—

(1) The Contracting Officer evaluated the arrangement during negotiation of the contract or contract renewal; and

(2) The subcontractor's price and/or costs were included in the plan's rates that were reviewed and approved by the Contracting Officer during negotiations of the contract or contract renewal.

(e) Unless the consent or approval specifically provides otherwise, consent by the Contracting Office to any subcontract shall not constitute a determination (1) of the acceptability of any subcontract terms or conditions; (2) of the allowability of any cost under this contract; or (3) to relieve the Contractor of any responsibility for performing this contract.

(f) No subcontract placed under this contract will provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts will not exceed the fee limitations in FAR 15.404–4(c)(4)(i). Any profit or fee payable under a subcontract will be in accordance with the provisions of Section _____.

(g) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(End of clause)

[58 FR 40381, July 28, 1993, as amended at 70 FR 41157, July 18, 2005]

2152.246–70 Quality assurance requirements.

As prescribed by 2146.270–1 insert the following clause:

QUALITY ASSURANCE REQUIREMENTS (OCT 2005)

(a) The Contractor shall develop and apply a quality assurance program as directed by the Contracting Officer pursuant to LIFAR 2146.270.

(b) The Contractor must keep complete records of its quality assurance procedures and the results of their implementation and make them available to an authorized Government entity during contract performance and for 5 years after the end of the contract term to which the records relate.

(c) The Contracting Officer or his or her representative has the right to inspect and test all services called for by the contract, to the extent practicable, at all times and places during the term of the contract and for as long afterward as the contract requires. The Contracting Officer or his or her representative shall perform any inspections and tests in a manner that will not unduly delay the work.

(End of clause)

[58 FR 40381, July 28, 1993, as amended at 70 FR 41157, July 18, 2005]

2152.249–70 Renewal and termination.

As prescribed in 2149.505–70, insert the following clause:

RENEWAL AND TERMINATION (OCT 2005)

(a) This contract renews automatically each October 1st, unless written notice of termination is given by the Contractor not less than 60 calendar days before the renewal date.

(b) This contract may be terminated by OPM at any time in accordance with FAR part 49 and FAR 52.249–8 for default by the Contractor. This contract terminates at the end of the grace period if the Government does not fund the LOC account for any of the premium due to the Contractor (see LIFAR 2149.002(a)(2)). However, the Contractor and OPM may agree to continue the contract. In addition, the Contractor agrees to reinstate the contract if termination (1) arose out of the Government's inadvertent failure to fund the LOC account for the amount of the premium payment prior to the expiration of the grace period as defined in LIFAR 2102.101, and/or (2) was due to circumstances beyond the Government's control, provided that the LOC account is funded in the amount of the premium payment due to the Contractor within 5 days after the expiration of the grace period. In the event of such reinstatement, OPM will equitably adjust the payments due under the contract to compensate the Contractor for any increased costs of performance that result from the Government's failure to fund the LOC account prior to the expiration of the grace period and/or such reinstatement.

(c) This contract may be terminated for convenience of the Government 60 days after the Contractor's receipt of OPM's written notice of termination.

(d) Upon termination of the contract for Contractor's default or OPM's convenience, the Contractor agrees to assist OPM with an orderly and efficient transition to a successor in accordance with LIFAR 2137.102, LIFAR 2137.110, and the provisions of the ''Continuity of Services'' clause at 2152.237–70. The Contractor is not required to continue performance subsequent to OPM's failure to fund the LOC account for premiums due under paragraph (b) of this clause.

(e) After receipt of a termination notice, the prime Contractor shall, unless directed otherwise by the Contracting Officer, terminate all subcontracts to the extent that they relate to the performance of the FEGLI Program contract. The failure of the prime Contractor to include an appropriate termination clause in any subcontract, or to exercise the clause rights, shall not affect the Contracting Officer's right to require the termination of the subcontract; or increase the obligation of the Government beyond what it would have been if the subcontract had contained an appropriate clause.

(End of clause)

[58 FR 40381, July 28, 1993, as amended at 70 FR 41157, July 18, 2005]

Subpart 2152.3—Provision and Clause Matrix

2152.370 Use of the matrix.

(a) The matrix in this section lists the FAR and LIFAR clauses to be used with the FEGLI Program contract. The clauses are to be incorporated in the contract in full text.

(b) Certain contract clauses are mandatory for FEGLI Program contracts. Other clauses are to be used only when made applicable by pertinent sections of the FAR or LIFAR. An ''M'' in the ''Use Status'' column indicates that the clause is mandatory. An ''A'' indicates that the clause is to be used only when the applicable conditions are met.

FEGLI PROGRAM CLAUSE MATRIX

Clause No.	Text reference	Title	Use status
FAR 52.202–1	FAR 2.201	Definitions	M
FAR 52.203–3	FAR 3.202	Gratuities	M
FAR 52.203–5	FAR 3.404	Covenant against Contingent Fees	M
FAR 52.203–6	FAR 3.503–2	Restrictions on Subcontractor Sales to the Government.	M
FAR 52.203–7	FAR 3.502–3	Anti-Kickback Procedures	M
FAR 52.203–12	FAR 3.808	Limitation on Payments to Influence Certain Federal Transactions.	M
2152.203–70	2103.571	Misleading, deceptive, or unfair advertising	M
2152.204–70	2104.9001	Taxpayer Identification Number	M
FAR 52.209–6	FAR 9.409(b)	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.	M
2152.209–71	2109.409(b)	Certification regarding debarment, suspension, proposed debarment and other responsibility matters.	M
2152.210–70	2110.7004(a)	Investment income	M
2152.210–71	2110.7004(b)	Notice of significant events	M

FEGLI PROGRAM CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use status
FAR 52.215–2	FAR 15.209(b)	Audit and Records—Negotiation	M
FAR 52.215–10	FAR 15.408(b)	Price Reduction for Defective Cost or Pricing Data	M
FAR 52.215–12	FAR 15.408(d)	Subcontractor Cost or Pricing Data	M
FAR 52.215–15	FAR 15.408(g)	Pension Adjustments and Asset Reversions	M
FAR 52.215–16	FAR 15.408(h)	Facilities Capital Cost of Money	M
FAR 52.215–17	FAR 15.408(i)	Waiver of Facilities Capital Cost of Money	A
FAR 52.215–18	FAR 15.408(j)	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) other than Pensions.	A
2152.215–70	2115.071	Contractor records retention	M
2152.216–70	2116.270–1(a)	Fixed price with limited cost redetermination—risk charge.	A
2152.216–71	2116.270–1(b)	Fixed price with limited cost redetermination—service charge.	A
FAR 52.219–8	FAR 19.708(a)	Utilization of Small Business Concerns	M
FAR 52.222–1	FAR 22.103–5(a)	Notice to the Government of Labor Disputes	M
FAR 52.222–3	FAR 22.202	Convict Labor	M
FAR 52.222–4	FAR 22.305	Contract Work Hours and Safety Standards Act—Overtime Compensation.	M
FAR 52.222–21	FAR 22.810(a)(1)	Prohibition of Segregated Facilities	M
FAR 52.222–22	FAR 22.810(a)(2)	Previous Contracts and Compliance Reports	M
FAR 52.222–25	FAR 22.810(d)	Affirmative Action Compliance	M
FAR 52.222–26	FAR 22.810(e)	Equal Opportunity	M
FAR 52.222–29	FAR 22.810(g)	Notification of Visa Denial	A
FAR 52.222–35	FAR 22.1310(a)(1)	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	M
FAR 52.222–36	FAR 22.1408(a)	Affirmative Action for Workers with Disabilities	M
FAR 52.222–37	FAR 22.1310(b)	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	M
FAR 52.223–6	FAR 23.505	Drug-Free Workplace	M
2152.224–70	2124.104–70	Confidentiality of records	M
FAR 52.227–1	FAR 27.201–2(a)	Authorization and Consent	M
FAR 52.227–2	FAR 27.202–2	Notice and Assistance regarding Patent and Copyright Infringement.	A
FAR 52.228–7	FAR 28.311–1	Insurance—Liability to Third Persons	M
2152.231–70	2131.270	Accounting and allowable cost	M
FAR 52.232–9	FAR 32.111(c)(2)	Limitation on Withholding of Payments	M
FAR 52.232–17	FAR 32.617(a) and (b)	Interest	M
FAR 52.232–23	FAR 32.806(a)(1)	Assignment of Claims	A
FAR 52.232–33	FAR 32.1110(a)(1)	Payment by Electronic Funds Transfer—Central Contractor Registration.	M
2152.232–70	2132.171	Payments	M
2152.232–71	2132.772	Non-commingling of FEGLI Program funds	M
2152.232–72	2132.806	Approval for assignment of claims	M
FAR 52.233–1	FAR 33.215	Disputes (Alternate I)	M
2152.237–70	2137.110	Continuity of services	M
FAR 52.242–1	FAR 42.802	Notice of Intent to Disallow Costs	M
FAR 52.242–3	FAR 42.709–6	Penalties for Unallowable Costs	M
FAR 52.242–13	FAR 42.903	Bankruptcy	M
2152.243–70	2143.205	Changes	M
FAR 52.244–5	FAR 44.204(c)	Competition in Subcontracting	M
2152.244–70	2144.204	Subcontracts	M
FAR 52.245–2	FAR 45.106(b)(1)	Government Property (Fixed-Price Contracts)	M
FAR 52.246–4	FAR 46.304	Inspection of Services—Fixed Price	M
FAR 52.246–25	FAR 46.805	Limitation of Liability—Services	M
2152.246–70	2146.270–1	Quality assurance requirements	M
FAR 52.247–63	FAR 47.405	Preference for U.S.-Flag Air Carriers	M
FAR 52.249–2	FAR 49.502(b)(1)(i)	Termination for Convenience of the Government (Fixed-Price).	M
FAR 52.249–8	FAR 49.504(a)(1)	Default (Fixed Price Supply and Service)	M
FAR 52.249–14	FAR 49.505(d)	Excusable Delays	M
2152.249–70	2149.505–70	Renewal and termination	M
FAR 52.251–1	FAR 51.107	Government Supply Sources	A
FAR 52.252–4	FAR 52.107(d)	Alterations in Contract	M
FAR 52.252–6	FAR 52.107(f)	Authorized Deviations in Clauses	M

[58 FR 40381, July 28, 1993, as amended at 70 FR 41157, July 18, 2005]

PARTS 2153–2199 [RESERVED]

CHAPTER 23—SOCIAL SECURITY ADMINISTRATION

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SUBCHAPTER A—GENERAL

PART 2300 [RESERVED]

PART 2301—SOCIAL SECURITY ACQUISITION REGULATION SYSTEM

Subpart 2301.1—Purpose, Authority, Issuance

Sec.
2301.101 Purpose.
2301.103 Authority.
2301.104 Applicability.
2301.105 Issuance.
2301.105–1 Publication and code arrangement.
2301.105–2 Arrangement of regulations.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 61 FR 50738, Sept. 27, 1996, unless otherwise noted.

Subpart 2301.1—Purpose, Authority, Issuance

2301.101 Purpose.

(a) The Social Security Acquisition Regulation (SSAR) is issued to establish uniform acquisition policies and procedures for the Social Security Administration (SSA) which conform to the Federal Acquisition Regulation (FAR) System.

(b) The SSAR implements and supplements the FAR. (Implementing material expands upon or indicates the manner of compliance with related FAR material. Supplementing material refers to policies or procedures which have no corresponding counterpart in the FAR.)

(c) The SSAR contains only formal agency policies and procedures which have a significant effect beyond SSA's internal operating procedures or which have a significant cost or administrative impact on contractors or offerors.

2301.103 Authority.

The SSAR is prescribed under the authority of 5 U.S.C. 301 and section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)).

2301.104 Applicability.

The FAR and SSAR apply to all SSA acquisitions as stated in FAR 1.104. Unless specified otherwise, the FAR and SSAR apply to acquisitions within and outside the United States.

2301.105 Issuance.

2301.105–1 Publication and code arrangement.

(a) The SSAR is also published in the same forms as indicated in FAR 1.105–1(a).

(b) The SSAR is issued in the Code of Federal Regulations (CFR) as Chapter 23 of Title 48, Social Security Acquisition Regulation (SSAR). It may be referenced as ''48 CFR chapter 23.''

2301.105–2 Arrangement of regulations.

(a) *General*. The SSAR conforms to the FAR with respect to divisional arrangements; i.e., subchapters, parts, subparts, sections, subsections, and paragraphs.

(b) *Numbering*. The FAR System of numbering permits the keying of the same or similar subject matter throughout Chapters 1 (FAR) and 23 (SSAR) of Title 48, CFR. However, SSA's system varies somewhat from that of the FAR numbering scheme, in the numbering to the left of the decimal point. Whereas the FAR only identifies the part number of 48 CFR to the left of the decimal point, our corresponding reference identifies the chapter as well. For example, the FAR paragraph corresponding to this SSAR paragraph is numbered 1.105–2(b) where ''1'' is the part number (may be one or two digits and is followed by a decimal point), ''1'' (to the right of the decimal point) is the subpart number, ''05'' (always two digits) is the section number, ''2'' is the subsection number (always hyphenated), and ''(b)'' is the paragraph reference. This SSAR reference is 2301.105–2(b) where the ''23'' is the chapter number assigned to SSA and the ''01'' represents the part number (part numbers will always be two digits for agencies implementing the FAR). The remaining numbers to the right of

the decimal point are identical to and reflect the same divisions as in the FAR numbering scheme.

(c) *References and citations.* (1) Unless otherwise stated, references indicate parts, subparts, sections, subsections, etc., of this regulation, the SSAR.

(2) This regulation shall be referred to as the Social Security Acquisition Regulation (SSAR). Any reference may be cited as ''SSAR'' followed by the appropriate number. Within the SSAR, the number alone will be used.

(3) Citations of authority shall be incorporated where necessary. All FAR reference numbers shall be preceded by ''FAR.''

PARTS 2302–2399 [RESERVED]

CHAPTER 24—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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SUBCHAPTER A—GENERAL

PART 2400 [RESERVED]

PART 2401—FEDERAL ACQUISITION REGULATION SYSTEM

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2401.000 Scope of part.

Subpart 2401.1—Purpose, Authority, Issuance

2401.100 Scope of subpart.
2401.101 Purpose.
2401.103 Authority.
2401.104 Applicability.
2401.105 Issuance.
2401.105–2 Arrangement of regulations.
2401.106 OMB approval under the Paperwork Reduction Act.
2401.106–70 Contract clause.

Subpart 2401.3—Agency Acquisition Regulations

2401.301 Policy.
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2401.403 Individual deviations.
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Subpart 2401.6—Career Development, Contracting Authority, and Responsibilities

2401.601 General.
2401.601–70 Senior Procurement Executive.
2401.602 Contracting Officers.
2401.602–3 Ratification of unauthorized commitments.
2401.603 Selection, appointment and termination of appointment.
2401.603–2 Selection.
2401.603–3 Appointment.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

SOURCE: 49 FR 7697, Mar. 1, 1984, unless otherwise noted.

2401.000 Scope of part.

This part describes the method by which the Department of Housing and Urban Development (HUD) implements, supplements and deviates from the Federal Acquisition Regulation (FAR) through the establishment of the HUD Acquisition Regulation (HUDAR), which prescribes the Department's procurement policies and procedures under the FAR System.

Subpart 2401.1—Purpose, Authority, Issuance

2401.100 Scope of subpart.

This subpart describes the HUDAR and states its relationship to the FAR System. This subpart also provides the explanation of the purpose and the authorities under which the HUDAR is issued.

2401.101 Purpose.

The Department of Housing and Urban Development Acquisition Regulation is hereby established as chapter 24 of the Federal Acquisition Regulation System (48 CFR chapter 24). It is issued to provide uniform Departmental policies and procedures for the acquisition of supplies, personal property and non-personal services by the Department's contracting activities and to make these policies and procedures readily available to Departmental personnel and to the public.

2401.103 Authority.

The HUDAR is prescribed under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)), section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), the general authorization in FAR 1.301, and the Secretary's delegations of procurement authority.

[71 FR 2434, Jan. 13, 2006]

2401.104 Applicability.

All acquisition of personal property and non-personal services (including construction) by HUD, except as may be otherwise authorized by law, must be accomplished in accordance with the HUDAR and the FAR.

[49 FR 7697, Mar. 1, 1984. Redesignated at 61 FR 19470, May 1, 1996]

2401.105 Issuance.

2401.105–2 Arrangement of regulations.

(a) *General*. Chapter 24 is divided into parts, subparts, sections, subsections, paragraphs and further subdivisions as necessary.

(b) *Numbering*. Generally, the numbering system and part, subpart, and section titles used in the HUDAR conform with those used in the FAR or as follows:

(1) When the HUDAR implements or deviates from a parallel part, subpart, section, subsection, or paragraph of the FAR, that implementation or deviation will be numbered and captioned where possible to correspond to the FAR part, subpart, section, subsection, or paragraph. For example, FAR subpart 1.4, Deviations, is implemented in HUD's acquisition regulations at subpart 2401.4, Deviations. (The ''24'' in the number indicates what chapter of title 48 contains the HUDAR.)

(2) When HUD supplements material contained in the FAR, it is given a unique number containing the numerals ''70'' or higher. The rest of the number will parallel the FAR part, subpart, section, subsection, or paragraph it is supplementing. For example, FAR 14.407, Award, does not contain a provision for the steps to be taken when only one bid is received. The HUDAR provides this information. Since the subject matter supplements what is contained in FAR 14.407, the HUDAR section supplementing the FAR is numbered 2414.407–70.

(3) Where material in the FAR requires no implementation or deviation, there is no corresponding numbering in the HUDAR. Therefore, there may be gaps in the HUDAR sequence of numbers where the FAR, as written, is applicable to the HUDAR and requires no further implementation.

(c) *Citation*. The HUDAR will be cited in accordance with FEDERAL REGISTER standards approved for the FAR. Thus, this section when referred to in the HUDAR is cited as 2401.105–2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as ''48 CFR 2401.105–2(c).'' Any section of the HUDAR may be formally identified by the section number, e.g., ''HUDAR 2401.105–2.'' In the HUDAR, any reference to the FAR will be indicated by ''FAR'' followed by the section number, for example FAR 37.108.

[49 FR 7697, Mar. 1, 1984, as amended at 58 FR 49437, Sept. 23, 1993. Redesignated at 61 FR 19470, May 1, 1996, as amended at 64 FR 46094, Aug. 23, 1999]

2401.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that Federal agencies obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more persons. HUD has received approval from OMB to collect information under the provisions of its Acquisition Regulation. The OMB Approval Number is 2535–0091.

[50 FR 46575, Nov. 8, 1985. Redesignated at 61 FR 19470, May 1, 1996]

2401.106–70 Contract clause.

The contracting officer shall insert the clause at 2452.201–70, Coordination of Data Collection Activities, in solicitations and contracts where the Contractor is required to collect information from ten or more public respondents.

[77 FR 73525, Dec. 10, 2012]

Subpart 2401.3—Agency Acquisition Regulations

2401.301 Policy.

(a)(1) *Implementation*. The HUDAR implements and supplements the FAR. Implementation material is that which expands upon related FAR material. Supplementing material is that for which there is no counterpart in the FAR.

2401.302 Limitations.

(c) *Exclusions*. Certain HUD policies and procedures which come within the scope of this chapter are not included in the HUDAR. Not included is a policy or procedure of an internal nature or which is expected to be effective for a period of less than six months.

Subpart 2401.4—Deviations

2401.403 Individual deviations.

The Senior Procurement Executive is the agency head's designee for the purposes of FAR 1.403.

[77 FR 73525, Dec. 10, 2012]

2401.404 Class deviations.

(a) The Senior Procurement Executive is the agency head's designee for the purposes of FAR 1.404(a).

[77 FR 73525, Dec. 10, 2012]

2401.470 Deviations from the HUDAR.

The Senior Procurement Executive is authorized to approve deviations from the HUDAR.

[77 FR 73525, Dec. 10, 2012]

2401.471 Requests for deviations—FAR and HUDAR.

(a) Requests for deviations from the FAR or HUDAR shall be submitted in writing to the Chief Procurement Officer.

(b) Each request for authorization of a deviation from the FAR or HUDAR shall:

(1) Identify the deviation as individual or class;

(2) Identify the FAR or the HUDAR requirement from which a deviation is sought;

(3) Fully describe the deviation, its intended effect, and the circumstances in which it will be used;

(4) Explain why a deviation is required and include pertinent background and supporting information;

(5) State whether the deviation has been requested previously and if so, the circumstances and result of the previous request; and

(6) Identify the contractor(s) and the contract(s) (including dollar values) that would be affected.

(c) At his or her discretion, the Chief Procurement Officer will consider requests for deviations on an expedited basis and, in urgent situations, may authorize deviations via telephone or electronic mail. Such authorizations will be confirmed in writing.

(d) The contracting officer shall include a copy of each authorized deviation in the contract file(s) to which it pertains.

[77 FR 73525, Dec. 10, 2012]

Subpart 2401.6—Career Development, Contracting Authority, and Responsibilities

2401.601 General.

2401.601–70 Senior Procurement Executive.

Unless otherwise designated by the Secretary through a delegation of authority, the Chief Procurement Officer is the Department's Senior Procurement Executive and is responsible for all departmental procurement policy, regulations, and procedures, and oversight of all HUD procurement operations. The Senior Procurement Executive is also responsible for the development of HUD's procurement system standards, evaluation of the system in accordance with approved criteria, enhancement of career management of the procurement workforce, and certification to the Secretary that the Department's procurement system meets approved criteria.

[71 FR 2434, Jan. 13, 2006]

2401.602 Contracting Officers.

2401.602–3 Ratification of unauthorized commitments.

(b)(1) Requests for ratification of unauthorized commitments shall be submitted in writing through the contracting officer to the ratification approval officials identified in paragraph (b)(3) of this section. The Assistant Secretary or equivalent official for the office that created the unauthorized commitment shall sign the request for ratification.

(3) In accordance with FAR 1.602–3(b)(3), the Senior Procurement Executive may delegate the authority to approve ratifications of individual unauthorized commitments down to, but not below, the level of an Assistant Chief Procurement Officer.

(c)(5) Concurrence by legal counsel in the Contracting Officer's recommendation for payment of an unauthorized commitment (see FAR 1.602–3(c)(5)) shall not be required when the value of

the payment is equal to, or less than, the simplified acquisition threshold.

[71 FR 2434, Jan. 13, 2006, as amended at 77 FR 73525, Dec. 10, 2012]

2401.603 Selection, appointment and termination of appointment.

2401.603–2 Selection.

(a) In selecting Contracting Officers, appointing authorities shall consider the experience, education, training, business acumen, judgment, character, reputation, and ethics of the individual to be appointed. Appointing authorities shall also consider the size and complexity of contracts the individual will be required to execute or administer, and any other limitations on the scope of the authority to be exercised.

(b) Individuals appointed to a position having Contracting Officer authority, and whose primary duties are performed as a Contracting Officer, other than contracting authority limited to simplified acquisition procedures, shall meet the following requirements:

(1) The education and specialized experience commensurate with the grade of the appointee as set forth in the qualification standards for the GS–1102 occupational series developed by the Office of Federal Procurement Policy under the authority of 41 U.S.C. 433, and two years of experience performing contracting, procurement, or purchasing operations in a government or commercial procurement office. Alternately, where appointment of a Contracting Officer involves a specialized procurement field, experience in that field may be considered as a criterion for appointment.

(2) Successful completion of contracting-related training as prescribed by the Senior Procurement Executive.

(c) The Senior Procurement Executive may waive education and specialized experience requirements as provided for in the qualification standards developed by the Office of Federal Procurement Policy under the authority of 41 U.S.C. 433.

[71 FR 2434, Jan. 13, 2006]

2401.603–3 Appointment.

(a) Appointments to officials not expressly delegated procurement authority by a published departmental delegation of authority shall be made in writing by the Head of the Contracting Activity. The Certificate of Appointment (SF 1402) shall constitute the appointing official's determination that the appointee meets the selection requirements set forth at 2401.603–2.

[64 FR 46094, Aug. 23, 1999]

PART 2402—DEFINITIONS OF WORDS AND TERMS

Sec.
2402.000 Scope of part.

Subpart 2402.1—Definitions

2402.101 Definitions.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

2402.000 Scope of part.

This part contains definitions of terms used generally throughout the HUDAR, in addition to those set forth in FAR part 2. Additional definitions will be found in individual subparts of the FAR and HUDAR covering terms used in those subparts only.

[49 FR 7699, Mar. 1, 1984]

Subpart 2402.1—Definitions

2402.101 Definitions.

Accounting Office means the Office of Accounting Operations within the Office of the Chief Financial Officer and includes that Office's field components.

Chief Procurement Officer means the HUD official having authority for all of the Department's procurement activities.

Contracting activity means the Office of the Chief Procurement

Department means the Department of Housing and Urban Development, which may also be designated as HUD.

Government Technical Monitor (GTM) means the individual responsible for assisting a Government Technical Representative in the latter's performance of his/her duties.

Government Technical Representative (GTR) means the individual serving as the Contracting Officer's representative responsible for monitoring the technical aspects of a contract, including guidance, oversight, and evaluation

of the Contractor's performance and deliverables.

Head of the contracting activity (HCA) means the Chief Procurement Officer. As permitted by the FAR and the HUD Acquisition Regulation, the Chief Procurement Officer, acting within his or her authority as the Senior Procurement Executive, may delegate HCA authority for specific actions or classes of actions down to, but not below, the level of the Assistant Chief Procurement Officers. Delegated HCA authority may not be further redelegated.

Legal counsel means HUD's Office of General Counsel and its field-based components.

Primary Organization Heads are those officials of the Department who are responsible for the major organizational components of HUD and who report directly to the Secretary or Deputy Secretary. The Primary Organization Heads of HUD include the Assistant Secretaries and equivalent Departmental management (e.g., President, GNMA, Inspector General, General Counsel, Chief Procurement Officer, etc.).

Secretary means the Secretary of the Department of Housing and Urban Development, or his or her designee.

Senior Procurement Executive means the Chief Procurement Officer.

[64 FR 46094, Aug. 23, 1999, as amended at 71 FR 2435, Jan. 13, 2006; 77 FR 73525, Dec. 10, 2012]

PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2403.1—Safeguards

Sec.
2403.101 Standards of conduct.

Subpart 2403.2—Contractor Gratuities to Government Personnel

2403.203 Reporting procedures.
2403.204 Treatment of violations.

Subpart 2403.3—Reports of Suspected Antitrust Violations

2403.303–70 Reporting requirements.

Subpart 2403.4—Contingent Fees

2403.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 2403.5—Other Improper Business Practices

2403.502–70 Subcontractor kickbacks.

Subpart 2403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2403.602 Policy.
2403.670 Solicitation provision and contract clause.

AUTHORITY: 42 U.S.C. 3535(d).

SOURCE: 49 FR 7700, Mar. 1, 1984, unless otherwise noted.

Subpart 2403.1—Safeguards

2403.101 Standards of conduct.

Detailed rules which apply to the conduct of HUD employees are set forth in 5 CFR part 2635 and 5 CFR part 7501.

[64 FR 46095, Aug. 23, 1999]

Subpart 2403.2—Contractor Gratuities to Government Personnel

2403.203 Reporting procedures.

Suspected violations of the gratuities clause (FAR 52.203–3) shall be reported to the Head of the Contracting Activity (HCA) in writing. The HCA will request the Office of Inspector General (OIG) to conduct any necessary investigation. Upon receipt of the OIG report, the HCA will evaluate the circumstances to determine if a violation has occurred. The HCA will refer violations and recommended corrective actions to the Senior Procurement Executive for disposition.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

2403.204 Treatment of violations.

The Senior Procurement Executive will process violations in accordance with FAR 3.204.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

Subpart 2403.3—Reports of Suspected Antitrust Violations

2403.303–70 Reporting requirements.

Potential anti-competitive practices such as described in FAR subpart 3.3, evidenced in bids or proposals, shall be reported to the Office of General Counsel through the Head of the Contracting Activity with a copy to the Senior Procurement Executive and the Inspector General. The Office of General Counsel will provide reports to the Attorney General as appropriate.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

Subpart 2403.4—Contingent Fees

2403.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Government personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant against Contingent Fees shall report the matter promptly to the Head of the Contracting Activity.

(b) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (a) of this section, the HCA shall review the facts and, if appropriate, take or direct one or more of the actions set forth at FAR 3.405(b). The HCA shall refer suspected fraudulent or criminal matters to HUD's Office of the Inspector General for possible referral to the Department of Justice.

[49 FR 7700, Mar. 1, 1984. Redesignated at 64 FR 46095, Aug. 23, 1999; 77 FR 73526, Dec. 10, 2012]

Subpart 2403.5—Other Improper Business Practices

2403.502–70 Subcontractor kickbacks.

Contracting Officers shall report suspected violations of the Anti-Kickback Act through the Head of the Contracting Activity to the Office of the Inspector General consistent with the procedures for reporting any violation of law contained in the current HUD Handbook 2000.3, Office of Inspector General Activities.

[64 FR 46095, Aug. 23, 1999]

Subpart 2403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2403.602 Policy.

The Senior Procurement Executive must approve exceptions to the restriction against contracts with Government employees under FAR subpart 3.6. In addition, the Contracting Officer shall comply with FAR subpart 9.5 before awarding any such contract.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986. Redesignated at 64 FR 46095, Aug. 23, 1999]

2403.670 Solicitation provision and contract clause.

Insert the clause at 48 CFR 2452.203–70 in all solicitations and contracts.

[65 FR 3576, Jan. 21, 2000]

PART 2404—ADMINISTRATIVE MATTERS

Subpart 2404.7—Contractor Records Retention

Sec.
2404.7001 Contract clause.

Subpart 2404.8—Government Contract Files

2404.805 Storage, handling and disposal of contract files.

AUTHORITY: 42 U.S.C. 3535(d).

Subpart 2404.7—Contractor Records Retention

2404.7001 Contract clause.

The contracting officer shall insert the clause at 2452.204–72, Preservation of, and Access to, Contract Records (Tangible and Electronically Stored Information (ESI) Formats), in all solicitations and contracts exceeding the simplified acquisition threshold. The contracting officer shall use the basic clause with its Alternate I in cost-reimbursement type contracts. The contracting officer shall use the basic

clause with its Alternate II in labor-hour and time-and-materials contracts.

[77 FR 73526, Dec. 10, 2012]

Subpart 2404.8—Government Contract Files

2404.805 Storage, handling and disposal of contract files.

(a) Unsuccessful cost and technical proposals shall be retained in the contracting activity for a period of two months following the contract award as reference material for debriefings. Upon expiration of the two month period, the contracting office shall either:

(1) Retain one copy of each such proposal with the official contract file; or,

(2) Ship one copy of each unsuccessful bid or proposal to the Federal Records Center unless a debriefing has been requested but not held, or a protest is pending concerning the procurement. In no event shall these documents be destroyed before expiration of the retention periods in FAR 4.805.

(b) *By the program office*. Unsuccessful proposals shall be retained on file in the program office which conducted the technical evaluation for a period of two months following the contract award. Upon expiration of the two month period, the program office shall return one copy of each unsuccessful bid or proposal not required for the conduct of debriefings to the contracting activity for proper disposition. The remaining copies will be destroyed.

[49 FR 7700, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984. Redesignated and amended at 60 FR 46155, Sept. 5, 1995]

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2405—PUBLICIZING CONTRACT ACTIONS

Subpart 2405.2—Synopses of Proposed Contract Actions

Sec.
2405.202 Exceptions.

Subpart 2405.5—Paid Advertisements

2405.502 Authority.

AUTHORITY: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d); and FAR class deviation approved November 15, 1990.

Subpart 2405.2—Synopses of Proposed Contract Actions

2405.202 Exceptions.

(b) The Senior Procurement Executive shall make the written determination in accordance with FAR 5.202(b) that advance notice of proposed contract actions is not appropriate or reasonable.

[50 FR 46576, Nov. 8, 1985]

Subpart 2405.5—Paid Advertisements

2405.502 Authority.

Use of paid advertisements in newspapers, trade journals, and other media are authorized by Delegations or Redelegations of Authority, subject to the availability of funds.

[49 FR 7701, Mar. 1, 1984]

PART 2406—COMPETITION REQUIREMENTS

Subpart 2406.2—Full and Open Competition After Exclusion of Sources

Sec.
2406.202 Establishing or maintaining alternative sources.

Subpart 2406.3—Other Than Full and Open Competition

2406.302–2 Unusual and compelling urgency.
2406.304 Approval of the justification.

Subpart 2406.5—Competition Advocates

2406.501 Requirement.

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

SOURCE: 50 FR 46576, Nov. 8, 1985, unless otherwise noted.

Subpart 2406.2—Full and Open Competition After Exclusion of Sources

2406.202 Establishing or maintaining alternative sources.

(b)(1) The HCA shall sign the Determination and Finding (D&F) required by FAR 6.202(b)(1).

Subpart 2406.3—Other Than Full and Open Competition

2406.302–2 Unusual and compelling urgency.

(d)(1)(ii) The HCA is the agency head's designee for the purposes of FAR 6.302–2(d)(1)(ii).

[77 FR 73526, Dec. 10, 2012]

2406.304 Approval of the justification.

(c) A class justification for other than full and open competition shall be approved in writing by the Senior Procurement Executive.

Subpart 2406.5—Competition Advocates

2406.501 Requirement.

The Senior Procurement Executive is the head of the agency for the purposes of FAR 6.501 and designates the Departmental competition advocate.

[77 FR 73526, Dec. 10, 2012]

PART 2407—ACQUISITION PLANNING

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2407.1—Acquisition Plans

2407.102 Policy.

The Senior Procurement Executive is responsible for establishing and maintaining internal procedures that meet the criteria contained in FAR subpart 7.1 for acquisition planning and acquisition plan content.

[77 FR 73526, Dec. 10, 2012]

PART 2408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2408.8—Acquisition of Printing and Related Supplies

2408.802–70 Contract clause.

The Contracting Officer shall insert the clause at 2452.208–71, Reproduction of Reports, in solicitations and contracts where the contractor is required to produce, as an end product, publications or other written materials.

[71 FR 2435, Jan. 13, 2006]

PART 2409—CONTRACTOR QUALIFICATIONS

Subpart 2409.4—Debarment, Suspension, and Ineligibility

Sec.

2409.405 Effect of listing.
2409.407–1 General.
2409.470 HUD regulations on debarment, suspension, and ineligibility.

Subpart 2409.5—Organizational and Consultant Conflicts of Interest

2409.503 Waiver.
2409.507 Solicitation provisions and contract clause.
2409.507–1 Solicitation provisions.
2409.507–2 Contract clauses.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

SOURCE: 49 FR 7701, Mar. 1, 1984, unless otherwise noted.

Subpart 2409.4—Debarment, Suspension, and Ineligibility

SOURCE: 77 FR 73526, Dec. 10, 2012, unless otherwise noted.

2409.405 Effect of listing.

(3) The Senior Procurement Executive is the agency head's designee under FAR 9.405(d)(3).

2409.407–1 General.

(d) The Senior Procurement Executive is the agency head's designee under FAR 9.407–1(d).

§ 2409.470 HUD regulations on debarment, suspension, and ineligibility.

HUD's policies and procedures concerning debarment and suspension are contained in 2 CFR part 2424, and, notwithstanding any language to the contrary, apply to procurement contracts.

[78 FR 49698, Aug. 15, 2013]

Subpart 2409.5—Organizational and Consultant Conflicts of Interest

2409.503 Waiver.

The Senior Procurement executive is the agency head's designee under FAR 9.503.

[77 FR 73526, Dec. 10, 2012]

2409.507 Solicitation provisions and contract clause.

2409.507–1 Solicitation provisions.

The Contracting Officer shall insert a provision substantially the same as the provision at 48 CFR 2452.209–70, Potential Organizational Conflicts of Interest, in all solicitations over the simplified acquisition limitation when the Contracting Officer has reason to believe that a potential organizational conflict of interest exists. The Contracting Officer shall describe the nature of the potential conflict in the provision.

[65 FR 3576, Jan. 21, 2000]

2409.507–2 Contract clauses.

The Contracting Officer shall insert a clause substantially the same as the

clause at 2452.209–71, Limitation on Future Contracts, in solicitations and contracts for services above the simplified acquisition threshold whenever the Contracting Officer has reason to believe that the nature of the proposed contract requirements may present an organizational conflict of interest as defined at FAR subpart 9.5. The Contracting Officer shall describe in the clause the nature of the potential conflict and the negotiated terms and duration of the limitation. The Contracting Officer shall insert the clause at 2452.209–72, Organizational Conflicts of Interest, in all solicitations and contracts.

[71 FR 2435, Jan. 13, 2006]

PART 2411—DESCRIBING AGENCY NEEDS

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2411.4—Delivery or Performance Schedules

2411.404 Contract clause.

(a) The Contracting Officer shall insert a clause substantially the same as the clause at 2452.211–70, Effective Date and Contract Period, in all solicitations and contracts for services, other than indefinite-delivery contracts.

(b) If the contract includes options to extend the period of the contract, the Contracting Officer shall use the clause with its Alternate I.

[71 FR 2435, Jan. 13, 2006]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACTING TYPES

PART 2413—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 2413.1—General [Reserved]

Subpart 2413.3—Simplified Acquisition Methods

Sec.
2413.301 Governmentwide commercial purchase card.
2413.305–2 Agency responsibilities.
2413.305–3 Conditions for use.

Subpart 2413.4—Imprest Fund [Reserved]

Subpart 2413.5—Purchase Orders [Reserved]

2413.505 Purchase order and related forms.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2413.1—General [Reserved]

Subpart 2413.3—Simplified Acquisition Methods

2413.301 Governmentwide commercial purchase card.

(c) HUD's procedures concerning the use of the government-wide commercial purchase card are contained in its Handbook on the Government-wide Commercial Credit Card Program.

[60 FR 46155, Sept. 5, 1995. Redesignated at 64 FR 46095, Aug. 23, 1999]

2413.305–2 Agency responsibilities.

(c) Policies and procedures governing the operation of imprest funds are established in internal directives issued by HUD's Office of the Chief Financial Officer.

[60 FR 46155, Sept. 5, 1995. Redesignated at 64 FR 46095, Aug. 23, 1999]

2413.305–3 Conditions for use.

(a) Transaction limits above that established in FAR 13.305–3 may be approved by the Senior Procurement Executive.

[60 FR 46155, Sept. 5, 1995. Redesignated and amended at 64 FR 46095, Aug. 23, 1999]

Subpart 2413.4—Imprest Fund [Reserved]

Subpart 2413.5—Purchase Orders

2413.505 Purchase order and related forms.

PART 2414—SEALED BIDDING

Subpart 2414.4—Opening of bids and Award of Contracts

Sec.
2414.404 Rejection of bids.
2414.404–1 Cancellation of invitations after opening.
2414.407 Mistakes in bid.
2414.407–3 Other mistakes disclosed before award.
2414.407–4 Mistakes after award.
2414.408 Award.
2414.408–70 Award when only one bid is received.

AUTHORITY: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

SOURCE: 49 FR 7702, Mar. 1, 1984, unless otherwise noted.

Subpart 2414.4—Opening of Bids and Award of Contracts

2414.404 Rejection of bids.

2414.404–1 Cancellation of invitations after opening.

(c) Invitations may be cancelled and all bids rejected before award but after opening when the Head of the Contracting Activity, as described in subpart 2402.1, determines in writing that cancellation is appropriate and consistent with FAR 14.404–1.

[50 FR 46577, Nov. 8, 1985]

2414.407 Mistakes in bids.

2414.407–3 Other mistakes disclosed before award.

(e) The determination to allow a bidder to: Correct a mistake in bid discovered before award (other than obvious clerical errors); withdraw a bid; or, neither correct nor withdraw a bid shall be submitted to the Head of the Contracting Activity for approval.

[57 FR 59788, Dec. 15, 1992. Redesignated at 61 FR 19470, May 1, 1996]

2414.407–4 Mistakes after award.

(d) For determinations under FAR 14.407–4(b), the Head of the Contracting Activity will obtain the concurrence of legal counsel before notification to the Contractor. The Contracting Officer shall be notified promptly of action to be taken.

[61 FR 19470, May 1, 1996, as amended at 64 FR 46095, Aug. 23, 1999]

2414.408 Award.

2414.408–70 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if the Contracting Officer makes a written determination that: (a) The specifications were clear and not unduly restrictive; (b) adequate competition was solicited and it could have been reasonably assumed that more than one bid would have been submitted; (c) the price is reasonable; and (d) the bid is otherwise in accordance with the invitation for bids. Such a determination shall be placed in the file.

[49 FR 7702, Mar. 1, 1984; 51 FR 7948, Mar. 7, 1986, as amended at 58 FR 49437, Sept. 23, 1993. Redesignated at 61 FR 19471, May 1, 1996]

PART 2415—CONTRACTING BY NEGOTIATION

Subpart 2415.2—Solicitation and Receipt of Proposals and Quotations

Sec.
2415.203 Requests for proposals.
2415.204 Contract format.
2415.209 Solicitation provisions and contract clauses.

Subpart 2415.3—Source Selection

2415.303 Responsibilities.
2415.304 Evaluation factors and significant subfactors.
2415.305 Proposal evaluation.
2415.308 Source selection decision.
2415.370 Solicitation provision.

Subpart 2415.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

2415.507 Protests against award.

Subpart 2415.6—Source Selection

2415.605 Content of unsolicited proposals.
2415.605–70 Unsolicited research proposals.
2415.606 Agency procedures.

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

SOURCE: 49 FR 7703, Mar. 1, 1984, unless otherwise noted.

Subpart 2415.2—Solicitation and Receipt of Proposals and Quotations

2415.203 Requests for proposals.

(a)(3) The contracting officer may limit the size of the technical and management portion of offers submitted in response to a request for proposals when the contracting officer determines that it is in the Government's best interest to do so.

[77 FR 73526, Dec. 10, 2012]

2415.204 Contract format.

(e) The HCA shall be responsible for making exemptions pursuant to FAR 15.204(e).

[77 FR 73526, Dec. 10, 2012]

2415.209 Solicitation provisions and contract clauses.

(a)(1) The Contracting Officer shall insert a provision substantially the same as the provision at 2452.215–70, Proposal Content, in all solicitations for negotiated procurements using the tradeoff selection process (see FAR 15.101–1) expected to exceed the simplified acquisition limit. The Contracting Officer shall adapt paragraph (c) of the provision (i.e., include, delete, revise, or further supplement subparagraphs) to address the particular

requirements of the immediate solicitation. The provision may be used in simplified acquisitions when it is necessary to obtain technical and management information in making the award selection. When award selection will be made through the lowest-priced technically acceptable source selection process, the provision shall be used with its Alternate I. If the proposed contract requires work on, or access to, HUD systems or applications (see the clause at 2452.239–70), the provision shall be used with its Alternate II. When the contracting officer has determined that it is necessary to limit the size of the technical and management portion of offers submitted by offerors, the provision shall be used with its Alternate III. The contracting officer shall clearly identify in the provision any contents of the technical and management portion of offers that are excluded from the size limitation (e.g., proposed contractor staff resumes).

(2) The contracting officer shall insert the provision at 2452.215–71, Relative Importance of Technical Evaluation Factors to Cost or Price, in solicitations for contracts to be awarded using the tradeoff selection process (see FAR 15.101–1) expected to exceed the simplified acquisition limit.

[77 FR 73526, Dec. 10, 2012]

Subpart 2415.3—Source Selection

2415.303 Responsibilities.

(a) The Senior Procurement Executive is the agency head for the purposes of FAR 15.303(a).

(b)(1) The technical evaluation requirements related to source selection shall be performed by a Technical Evaluation Panel (TEP). The TEP may consist of any number of members as appropriate to the acquisition, with one member serving as the chairperson. As needed, the TEP may include advisors and committees to focus on specific technical areas or concerns. The TEP is responsible for fully documenting the evaluation of all proposals as appropriate to the source selection approach in use and for making the source selection recommendation to the source selection authority.

[77 FR 73527, Dec. 10, 2012]

2415.304 Evaluation factors and significant subfactors.

(c)(3)(i) The extent of participation of small businesses in performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor, shall be addressed in the source selection for contracts to be awarded using the tradeoff source selection process (see FAR 15.101–1) that require the use of the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(d) The solicitation shall state the basis for the source selection decision as either the ''lowest price technically acceptable'' (LPTA) process or the dquo;tradeoff'' process (as defined at FAR subpart 15.1).

[77 FR 73527, Dec. 10, 2012]

2415.305 Proposal evaluation.

(a) After receipt of proposals, the Contracting Officer will forward copies of the technical portion of each proposal to the TEP Chairperson or his or her designee. The cost/price portion of each proposal shall be retained by the Contracting Officer pending initial technical evaluation by the TEP.

(3) *Technical evaluation*. The TEP shall rate each proposal based on the evaluation factors specified in the solicitation. The TEP shall identify each proposal as being acceptable, unacceptable but capable of being made acceptable, or unacceptable. A proposal shall be considered unacceptable if it is so clearly deficient that it cannot be corrected through written or oral discussions. Under the tradeoff process, predetermined threshold levels of technical acceptability for proposals shall not be employed. A technical evaluation report, which complies with FAR 15.305(a)(3), shall be prepared and signed by the technical evaluators, furnished to the contracting officer, and maintained as a permanent record in the official procurement file.

[50 FR 46577, Nov. 8, 1985, as amended at 57 FR 59789, Dec. 15, 1992; 60 FR 46156, Sept. 5, 1995; 61 FR 19471, May 1, 1996. Redesignated and amended at 64 FR 46096, Aug. 23, 1999; 77 FR 73527, Dec. 10, 2012]

2415.308 Source selection decision.

After receipt and evaluation of final proposal revisions, the TEP shall document its selection recommendation(s) in a final written report. The final report shall include sufficient information to support the recommendation(s) made, appropriate to the source selection approach and type and complexity of the acquisition.

[64 FR 46096, Aug. 23, 1999]

2415.370 Solicitation provision.

The contracting officer shall insert the provision at 2452.215–72, Evaluation of Small Business Participation, in solicitations for contracts that require the use of the FAR clause in 52.219–9, ''Small Business Subcontracting Plan,'' that will be awarded using the tradeoff source selection process (see FAR 15.101–1).

[77 FR 73527, Dec. 10, 2012]

Subpart 2415.5—Preaward, Award, and Postaward notifications, Protests, and Mistakes

2415.507 Protests against award.

Protests against awards of negotiated procurements shall be processed in accordance with FAR subpart 33.1 and HUDAR subpart 2433.1

[50 FR 46578, Nov. 8, 1985. Redesignated at 61 FR 19471, May 1, 1996, and further redesignated at 64 FR 46096, Aug. 23, 1999]

Subpart 2415.6—Source Selection

SOURCE: 50 FR 46577, Nov. 8, 1985, unless otherwise noted.

2415.605 Content of unsolicited proposals.

2415.605–70 Unsolicited research proposals.

FAR subpart 15.6 outlines the policies and procedures relating to unsolicited proposals. In addition to these requirements, the Department requires that each award made as the result of an unsolicited proposal for research contain a commitment to provide actual cost-sharing. This provision will be included in the award whether or not cost-sharing was part of the unsolicited proposal.

[49 FR 7703, Mar. 1, 1984. Redesignated and amended at 64 FR 46095, Aug. 23, 1999]

2415.606 Agency procedures.

(a) The contact points shall ensure that unsolicited proposals are controlled, evaluated, safeguarded, and disposed of in accordance with FAR subpart 15.6. Proposals, as used in this section, shall mean proposals for procurement contracts with the Department and shall not include proposals or applications for assistance, including grants or cooperative agreements.

(b) Unless otherwise specified in a FEDERAL REGISTER announcement, unsolicited proposals should be submitted to:

(1) For research: Department of Housing and Urban Development, Office of Policy Development and Research, PD&R Correspondence Unit, 451 Seventh Street, SW., Washington, DC 20410–0001.

(2) For all others: Department of Housing and Urban Development, Office of the Chief Procurement Officer, 451 Seventh Street, SW., Washington, DC 20410–0001.

(c) Individuals or organizations interested in submitting unsolicited proposals should contact the appropriate office in paragraph (b) of this section for additional information on proposal requirements.

[71 FR 2435, Jan. 13, 2006]

PART 2416—TYPES OF CONTRACTS

Subpart 2416.3—Cost-Reimbursement Contracts

Sec.
2416.307 Contract clauses.

Subpart 2416.4—Incentive Contracts

2416.406 Contract clauses.

Subpart 2416.5—Indefinite-Delivery Contracts

2416.505 Ordering.
2416.506 Solicitation provisions and contract clauses.
2416.506–70 Unpriced delivery/task orders.

Subpart 2416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2416.603 Letter contracts.
2416.603–2 Application.

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

SOURCE: 49 FR 7706, Mar. 1, 1984, unless otherwise noted.

Subpart 2416.3—Cost-Reimbursement Contracts

2416.307 Contract clauses.

(a) The contracting officer shall insert the clause at 2452.216–79, Estimated Cost (No Fee), in all cost-reimbursement (no fee) type solicitations and contracts.

(b) The contracting officer shall insert the clause at 2452.216–80, Estimated Cost and Fixed-Fee, in all cost-plus-fixed fee type solicitations and contracts.

[77 FR 73527, Dec. 10, 2012]

Subpart 2416.4—Incentive Contracts

2416.406 Contract clauses.

(e)(1) The Contracting Officer shall insert the clause at 2452.216–70, Estimated Cost, Base Fee and Award Fee, in all cost-plus-award-fee solicitations and contracts.

(2) The Contracting Officer shall insert the clause at 2452.216–71, Award Fee, in all fixed-price-award-fee solicitations and contracts.

(3) The Contracting Officer shall insert the clauses at 2452.216–72, Determination of Award Fee Earned, 2452.216–73, Performance Evaluation Plan, and 2452.216–74, Distribution of Award Fee, in all award-fee solicitations and contracts. The Contracting Officer may modify the clauses to meet individual situations, and any clause or specific requirement therein may be deleted when it is not applicable to a given contract. When including the clause at 2452.216–74, Distribution of Award Fee, in cost-plus-award-fee contracts, the Contracting Officer shall use the clause with its Alternate I.

(4) When including the clauses at 2452.216–70, Estimated Cost, Base Fee and Award Fee, and 2452.216–71 Award Fee, in indefinite-delivery solicitations and contracts under which all supplies or services will be obtained by issuance of task or delivery orders, the Contracting Officer shall substitute the word ''order'' for the word ''contract.''

[71 FR 2436, Jan. 13, 2006]

Subpart 2416.5—Indefinite-Delivery Contracts

2416.505 Ordering.

(a) The contracting officer shall be the ordering official for all task orders except as provided for herein. The contracting officer may designate an ordering official when orders are to be placed on a firm fixed-price basis, the prices of the specific services or supplies to be provided under the order are set forth in the contract, and there is no negotiation of order terms. The contracting officer shall not designate ordering officials:

(1) For contracts for services where prices are not tied to delivery of a completed service;

(2) For any contracts where discounts need to be negotiated; or

(3) In any other circumstances where adjustment of contract price or any other terms and conditions is necessary.

(b)(6) The Departmental competition advocate also serves as the Departmental task and delivery order ombudsman in accordance with FAR 16.505(b)(6). In addition to the duties set forth at FAR 16.505(b)(6), the ombudsman shall recommend any corrective action regarding affording fair opportunity to contractors to compete for orders to the responsible contracting officer.

[77 FR 73527, Dec. 10, 2012]

2416.506 Solicitation provisions and contract clauses.

2416.506–70 Solicitation provisions and contract clauses.

(a) *Unpriced task orders.* The Contracting Officer shall insert the clause at 2452.216–75, Unpriced Task Orders, in contracts in which task orders are individually negotiated and when there may be a need to issue unpriced task orders. The Contracting Officer shall

ensure that the cost of the work authorized by any unpriced task order is not in excess of the funds available for the order. The Contracting Officer shall establish the time period for the definitization of each unpriced order and insert the anticipated date of definitization in the clause. The HCA shall approve periods that exceed 180 days.

(b) *Minimum and maximum quantities or amounts for order*. The contracting officer shall insert a clause substantially the same as 2452.216–76, Minimum and Maximum Quantities or Amounts for Order, in all indefinite-quantity and requirements solicitations and contracts. When the clause is used for requirements solicitations and contracts, the contracting officer may either delete paragraph (a) or insert ''none'' for the minimum quantity or amount.

(c) *Estimated quantities—requirements contract*. The Contracting Officer shall insert the provision at 2452.216–77, Estimated Quantities—Requirements Contract, in all solicitations for requirements contracts.

(d) *Ordering procedures*. The Contracting Officer shall insert the clause at 2452.216–78, Ordering Procedures, in all indefinite-delivery solicitations and contracts. If the supplies or services to be ordered under the contract are prepriced in the contract, the orders will be issued on a fixed-price basis, and no order terms are negotiated before issuance, the Contracting Officer shall use the clause with its Alternate I. If the contract provides for the issuance of task orders for services on a negotiated basis (see also 2416.505), the Contracting Officer shall use the clause with its Alternate II.

[71 FR 2436, Jan. 13, 2006, as amended at 77 FR 73527, Dec. 10, 2012]

Subpart 2416.6—Time-And-Materials, Labor-Hour, and Letter Contracts

2416.603 Letter contracts.

2416.603–2 Application.

(c) The HCA shall approve additional time periods for definitization of letter contracts authorized by the Contracting Officer pursuant to FAR 16.603–2(c).

[64 FR 46096, Aug. 23, 1999]

PART 2417—SPECIAL CONTRACTING METHODS

Subpart 2417.2—Options

Sec.
2417.204 Contracts.

Subpart 2417.5—Interagency Acquisitions Under the Economy Act

2417.504 Ordering procedures.

AUTHORITY: 31 U.S.C. 1535; 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Subpart 2417.2—Options

2417.204 Contracts.

(e)(1) The Senior Procurement Executive (SPE) is authorized to approve contract periods for other than information technology contracts that exceed the 5-year limit set forth at FAR 17.204(e) that are not otherwise limited by statute (e.g., the Service Contract Act). Except as provided for in paragraphs (e)(2) and (4) of this section, the SPE shall approve any contract period that will exceed 5 years, including all option periods, prior to the award of the basic contract.

(2) With regard to HUD indefinite-delivery contracts, the ''contract period'' requiring the SPE's prior approval in paragraph (e)(1) of this section shall mean the ordering period of a contract. Unless otherwise specified within the contract, the 5-year limit shall not apply to the period that any task or delivery order issued within the contract's ordering period extends beyond the final end date of the contract's ordering period, regardless of whether the performance period of the order causes the total period of the contract to exceed 5 years. The issuance of any such task or delivery order does not require the SPE's approval. Task or delivery orders with end dates extending beyond the ordering period of the contract may not exceed the final delivery date that the contracting officer has

stated in the applicable indefinite-delivery FAR clause included in the contract (i.e., 52.216–20, ''Definite Quantity,'' paragraph (d); 52.216–21, ''Requirements,'' paragraph (f); or 52.216–22, ''Indefinite Quantity,'' paragraph (d)).

(3) The SPE's authority described in paragraphs (e)(1) and (2) of this section shall not be used as the basis to retroactively increase or extend the period of any existing contract.

(4) The SPE is not required to approve any option properly exercised pursuant to the FAR clause at 52.217–8, ''Option to Extend Services,'' that extends the contract period beyond 5 years; provided that the total length of all options exercised pursuant to FAR clause 52.217–8 may not exceed 6 months; and provided that exercise of any such options shall be in accordance with FAR 37.111. Any proposed extension of a contract beyond the 6-month maximum permitted by FAR 52.217–8 shall be considered a new requirement and shall be subject to the competition requirements of FAR part 6.

[77 FR 73528, Dec. 10, 2012]

Subpart 2417.5—Interagency Acquisitions Under the Economy Act

2417.504 Ordering procedures.

(b) The Contracting Officer shall use HUD Form 730, Award/Modification of Interagency Agreement, when placing or modifying an order for supplies or services from another Government agency.

[53 FR 46535, Nov. 17, 1988]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2419—SMALL BUSINESS PROGRAMS

Subpart 2419.2—Policies

Sec.
2419.201 General policy.

Subpart 2419.5—Set-Asides for Small Business

2419.503 [Reserved]

Subpart 2419.7—The Small Business Subcontracting Program

2419.708 Solicitation provisions and contract clauses.

Subpart 2419.8—Small Business Administration Section (8)(a) Program

2419.800 General.
2419.803 Selecting acquisitions for the 8(a) Program.
2419.803–70 Procedures for simplified acquisitions under the partnership agreement.
2419.804 Evaluation, offering, and acceptance.
2419.804–2 Agency offering.
2419.804–3 SBA acceptance.
2419.804–370 SBA acceptance under partnership agreements for acquisitions exceeding the simplified acquisition threshold.
2419.805 Competitive 8(a).
2419.805–2 Procedures.
2419.806 Pricing the 8(a) contract.
2419.808 Contract negotiation.
2419.808–1 Sole source.
2419.811 Preparing the contracts.
2419.811–1 Sole source.
2419.811–2 Competitive.
2419.811–3 Contract clauses.
2419.812 Contract administration.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Subpart 2419.2—Policies

2419.201 General policy.

(d) The Director of HUD's Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for the administration of the HUD small business program and for performing all functions and duties prescribed in FAR 19.201(d). This includes Department-wide responsibility for developing, implementing, executing, and managing these programs; providing advice on these programs; and representing HUD before other government agencies on matters primarily affecting small, small disadvantaged, and women-owned small business; HUBZone small business; veteran-owned small business; and service-disabled veteran-owned small business concerns.

(e) The Director of OSDBU shall designate small business specialists who shall advise and assist HUD's contracting activity and small business concerns as described in paragraph (d) on all matters related to small business participation in HUD acquisitions. Small business specialists shall perform the following functions:

(1) Maintain a program designed to locate capable small-business sources as referenced in paragraph (d) of this section for current and future procurements;

(2) Coordinate inquiries and requests for advice from such businesses on procurement matters;

(3) Review proposed requirements for supplies and services, ensure that all such business concerns will be afforded an equitable opportunity to compete, and, as appropriate, initiate recommendation for small business or Section 8a set-asides (under the Small Business Act);

(4) Take action to ensure the availability of adequate specifications and drawings, when necessary, to obtain participation by such businesses in a procurement;

(5) Review proposed procurements for possible breakout of items suitable for procurement from such businesses;

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

(7) Ensure that adequate records are maintained and accurate reports are prepared concerning such businesses participation in the procurement program;

(8) Make available to SBA copies of solicitations, when requested, and

(9) Act as liaison between the Contracting Officer and the appropriate SBA office in connection with set-

asides, certificates of competency, size classification, and any other matter in which the small business program may be involved.

[49 FR 7706, Mar. 1, 1984, as amended at 50 FR 46578, Nov. 8, 1985; 61 FR 19471, May 1, 1996; 77 FR 73528, Dec. 10, 2012]

Subpart 2419.5—Set-Asides for Small Business

2419.503 [Reserved]

Subpart 2419.7—The Small Business Subcontracting Program

2419.708 Solicitation provisions and contract clauses.

(b) The contracting officer shall insert clause at 2452.219–73, ''Incorporation of Subcontracting Plan,'' in solicitations and contracts when a subcontracting plan is required. The contracting officer shall insert the provision at 2452.219–74, ''Small Business Subcontracting Goals,'' in solicitations for contracts that are required to include the FAR clauses at 52.219–8, ''Utilization of Small Business Concerns,'' and 52.219–9, ''Small Business Subcontracting Plan.''

(d) The contracting officer shall insert the provision at 2452.219–70, Small Business Subcontracting Plan Compliance, in solicitations for contracts that are expected to exceed the dollar thresholds set forth at FAR 19.702 and are required to include the clause at FAR 52.219–9, Small Business Subcontracting Plan.

[77 FR 73528, Dec. 10, 2012]

Subpart 2419.8—Small Business Administration Section (8)(a) Program

2419.800 General.

(f) By Partnership Agreement between the SBA and HUD, the SBA delegated to HUD's Senior Procurement Executive its authority under paragraph 8(a)(1)(A) of the Small Business Act (5 U.S.C. 637(a)) to enter into 8(a) prime contracts, and its authority under 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. Under the Partnership Agreement, a contract may be awarded directly to an 8(a) firm on either a sole-source or competitive basis. The SBA reserves the right to withdraw the delegation issued as a result of the Partnership Agreement; however, any such withdrawal shall have no effect on contracts already awarded under the Partnership Agreement.

[77 FR 73528, Dec. 10, 2012]

2419.803 Selecting acquisitions for the 8(a) Program.

2419.803–70 Procedures for simplified acquisitions under the partnership agreement.

(a) HUD contracting officers may use the procedures of FAR part 13 and HUDAR part 2413 to make purchases not exceeding the simplified acquisition threshold from 8(a) Participants. The following apply to such acquisitions:

(1) Neither offering letters to, nor acceptance letters from the SBA are required.

(2) The contracting officer will use the Central Contractor Registration (CCR) database on the Internet (*http://www.ccr.gov*) to establish that the selected 8(a) firm is a current program participant.

(b) Once an 8(a) contractor has been identified, the contracting officer will establish the price with the selected 8(a) contractor.

(c) For acquisitions requiring an award document (e.g., purchase order), the contracting officer will:

(1) Prepare and issue an award document in accordance with the applicable provisions of FAR part 13 and HUDAR part 2413. The applicable clauses prescribed in 2419.811–3 shall be included in the award document. The contracting officer will issue the award document directly to the 8(a) firm; and

(2) Forward to the SBA District Office serving the 8(a) firm a copy of the award document within 5 days after the award is issued.

[77 FR 73528, Dec. 10, 2012]

2419.804 Evaluation, offering, and acceptance.

2419.804–2 Agency offering.

(d) When applicable, the notification must identify that the offering is in accordance with the Partnership Agreement identified in 2419.800.

[77 FR 73529, Dec. 10, 2012]

2419.804–3 SBA acceptance.

2419.804–370 SBA acceptance under partnership agreements for acquisitions exceeding the simplified acquisition threshold.

(a) The following procedures apply to the acceptance of requirements covered by the Partnership Agreement for acquisitions that exceed the simplified acquisition threshold.

(1) The SBA's decision whether to accept the requirement will be transmitted to HUD in writing within 5 working days of receipt of the offer.

(2) The SBA may request, and HUD may grant, an extension beyond the 5-day limit.

(3) SBA's acceptance letters should be faxed or emailed to HUD.

(4) If HUD has not received an acceptance or rejection of the offering from SBA within 5 days of SBA's receipt of the offering letter, the contracting officer may assume that the requirement has been accepted and proceed with the acquisition.

(b) The contents of SBA's acceptance letter shall be limited to the eligibility of the recommended 8(a) contractor.

[77 FR 73529, Dec. 10, 2012]

2419.805 Competitive 8(a).

2419.805–2 Procedures.

(b)(3) For requirements exceeding the simplified acquisition threshold that are processed under the Partnership Agreement cited in 2419.800, the contracting officer shall submit the name, address, and telephone number of the low bidder (sealed bid requirements) or the apparent successful offeror (negotiated acquisitions) to the SBA Business Opportunity Specialist at the field office servicing the identified 8(a) firm. The SBA will determine the eligibility of the firm(s) and advise the contracting officer within 2 working days of the receipt of the request. If the firm is determined to be ineligible, the contracting officer will submit information on the next low offeror or next apparent successful offeror (as applicable) to the cognizant SBA field office.

[77 FR 73529, Dec. 10, 2012]

2419.806 Pricing the 8(a) contract.

(a) For contracts awarded under the Partnership Agreement cited in 2419.800, when required by FAR subpart 15.4, the contracting officer shall obtain certified cost or pricing data directly from the 8(a) contractor.

[77 FR 73529, Dec. 10, 2012]

2419.808 Contract negotiation.

2419.808–1 Sole source.

(a) If the acquisition is conducted under the Partnership Agreement cited in 2419.800, the 8(a) contractor is responsible for negotiating with HUD within the time frame established by the contracting officer. If the 8(a) contractor does not negotiate within the established time frame, and HUD cannot allow additional time, HUD, after notification and approval by SBA, may proceed with the acquisition from other sources.

(b) If the acquisition is conducted under the Partnership Agreement cited in 2419.800, HUD is delegated the authority to negotiate directly with the 8(a) participant; however, if requested by the 8(a) participant, the SBA may participate in negotiations.

[77 FR 73529, Dec. 10, 2012]

2419.811 Preparing the contracts.

2419.811–1 Sole source.

(e) If the award is to be made under the Partnership Agreement cited in 2419.800, the contracting officer shall prepare the instrument to be awarded to the 8(a) firm in accordance with the normal HUD procedures for non-8(a) contracts, except for the following:

(1) The award form shall cite 41 U.S.C. 253(c)(5) and 15 U.S.C. 637(a) as the authority for use of other than full and open competition.

(2) The contracting officer shall include appropriate contract clauses, as

necessary, to reflect that the acquisition is an 8(a) contract awarded under the authority of the Partnership Agreement cited in 2419.800.

(3) The contracting officer shall include SBA's requirement number on the contract unless the acquisition does not exceed the simplified acquisition threshold.

(4) A single award document shall be used between HUD and the 8(a) contractor. As such, no signature on the part of the SBA is required; a single signature by the HUD contracting officer shall suffice. The 8(a) contractor's signature shall be placed on the award document as the prime contractor. The 8(a) contractor's name and address shall be placed in the ''awarded to'' or ''contractor name'' block on the appropriate forms.

[77 FR 73529, Dec. 10, 2012]

2419.811–2 Competitive.

(a) If the award is to be made under the Partnership Agreement cited in 2419.800, competitive contracts for 8(a) firms shall be prepared in accordance with the same standards as 8(a) sole-source contracts as set forth in 2419.811–1.

(b) If the acquisition is conducted under the Partnership Agreement cited in 2419.800, the process for obtaining signatures shall be as specified in 2419.811–1(e).

[77 FR 73529, Dec. 10, 2012]

2419.811–3 Contract clauses.

(d)(3) The contracting officer shall use the clause at FAR 52.219–18, ''Notification of Competition Limited to Eligible 8(a) Concerns,'' with the clause at 2452.219–71, ''Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III to FAR 52.219–18,'' for competitive 8(a) acquisitions processed under the Partnership Agreement cited in 2419.800.

(f) In contracts and purchase orders awarded under the Partnership Agreement cited at 2419.800, the contracting officer shall substitute the clause at 2452.219–72, Section 8(a) Direct Award, for the clauses at FAR 52.219–11, ''Special 8(a) Contract Conditions;'' FAR 52.219–12, ''Special 8(a) Subcontract Conditions;'' and FAR 52.219–17, ''Section 8(a) Award.''

[77 FR 73530, Dec. 10, 2012]

2419.812 Contract administration.

(e) Awards under the Partnership Agreement cited in 2419.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause at 2452.219–71, Section 8(a) Direct Award (Deviation), which requires the 8(a) contractor to notify the SBA and the HUD contracting officer when ownership of the firm is being transferred.

[77 FR 73530, Dec. 10, 2012]

PART 2420 [RESERVED]

PART 2422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

AUTHORITY: 29 U.S.C. 793; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46535, Nov. 17, 1988, unless otherwise noted.

Subpart 2422.14—Employment of the Handicapped

2422.1408 Contract clause.

(c) The Contracting Officer shall insert the clause at 2452.222–70, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities, in solicitations and contracts when the contract will require the contractor (including contractor employees and subcontractors) to hold meetings, conferences or seminars.

[71 FR 2437, Jan. 13, 2006]

PART 2424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2424.1—Protection of Individual Privacy

Sec.
2424.103 Procedures.

Subpart 2424.2—Freedom of Information Act

2424.203 Policy.

AUTHORITY: 5 U.S.C. 552, 552a; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 49 FR 7708, Mar. 1, 1984, unless otherwise noted.

Subpart 2424.1—Protection of Individual Privacy

2424.103 Procedures.

(b)(2) See 24 CFR part 16 for the HUD regulations which implement the Privacy Act.

Subpart 2424.2—Freedom of Information Act

2424.203 Policy.

See 24 CFR part 15 for the HUD regulations which implement the Freedom of Information Act.

[49 FR 7708, Mar. 1, 1984. Redesignated at 64 FR 46097, Aug. 23, 1999]

PART 2425—TRADE AGREEMENTS ACT

AUTHORITY: 42 U.S.C. 3535(d).

2425.402 Policy.

(a)(1) It is the Department's policy to determine whether the Trade Agreements Act applies based on the total estimated dollar value of the proposed acquisition before the solicitation is issued, including all line items and options.

[57 FR 59790, Dec. 15, 1992, as amended at 64 FR 46097, Aug. 23, 1999]

PART 2426—OTHER SOCIOECONOMIC PROGRAMS

Subpart 2426.70—Minority Business Enterprises

Sec.
2426.7001–2426.7002 [Reserved]

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46536, Nov. 17, 1988, unless otherwise noted.

Subpart 2426.70—Minority Business Enterprises

2426.7001–2426.7002 [Reserved]

PART 2427—PATENTS, DATA, AND COPYRIGHTS

Subpart 2427.3—Patent Rights Under Government Contracts

Sec.
2427.305 Administration of patent rights clauses.
2427.305–2 Administration by the Government.

Subpart 2427.4—Rights in Data and Copyrights

2427.470 Contract clause.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46536, Nov. 17, 1988, unless otherwise noted.

Subpart 2427.3—Patent Rights Under Government Contracts

2427.305 Administration of patent rights clauses.

2427.305–2 Administration by the Government.

(b) Contractor reports. Contractors shall complete and submit to the Contracting Officer HUD Form 770, Report of Inventions and Subcontracts, upon receipt of said form. The Contracting Officer shall send the form to those contractors whose contract work may have required the development of inventions upon physical completion of the contract.

Subpart 2427.4—Rights in Data and Copyrights

2427.470 Contract clause.

The contracting officer shall insert the clause 2452.227–70, Government Information, in all solicitations and contracts when the Government will provide information to the contractor, and/or when the contractor will obtain information on the Government's behalf to perform work required under the contract. The contracting officer shall describe all information to be

provided to the contractor in paragraph (d)(1) of the clause.

[77 FR 73530, Dec. 10, 2012]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2428—BONDS AND INSURANCE

Subpart 2428.1—Bonds

Sec.
2428.106 Administration.
2428.106–6 Furnishing information.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

SOURCE: 50 FR 46578, Nov. 8, 1985, unless otherwise noted.

Subpart 2428.1—Bonds

2428.106 Administration.

2428.106–6 Furnishing information.

(c) The Contracting Officer shall furnish the certified copy of the bond and the contract for which it was given to any person who requests them in accordance with FAR 28.106–6.

[64 FR 46097, Aug. 23, 1999]

PART 2429—TAXES

AUTHORITY: 42 U.S.C. 3535(d).

Subpart 2429.1—General

2429.101 Resolving tax problems.

In order to have uniformity in HUD's treatment of the tax aspects of contracting and ensure effective cooperation with other Government agencies on tax matters of mutual interest, the Office of General Counsel has the responsibility within HUD for handling all those tax problems. Therefore, the contracting activity will not engage in negotiation with any taxing authority for the purpose of determining the validity or applicability of, or obtaining exemptions from or refund of, any tax. When a problem exists, the Contracting Officer shall request, in writing, the assistance of legal counsel. The request shall detail the problem and be accompanied by appropriate backup data. Counsel shall report to the Contracting Officer as to the necessary disposition of the tax problem. The Contracting Officer will notify the contractor of the outcome of the tax problem. Counsel is responsible for communications with the Department of Justice for representation or intervention in proceedings concerning taxes.

[60 FR 46157, Sept. 5, 1995]

PART 2432—CONTRACT FINANCING

2432.006 Reduction or suspension of contract payments upon finding of fraud.
2432.006–1 General.
2432.006–2 Definitions.
2432.006–3 Responsibilities.
2432.006–4 Procedures.
2432.007 Contract financing payments.

Subpart 2432.1—Non-Commercial Item Purchase Financing

Sec.
2432.114 Unusual contract financing.

Subpart 2432.2—Commercial Item Purchase Financing

2432.201 Statutory authority.

Subpart 2432.4—Advance Payments for Non-Commercial Items

2432.402 General.
2432.407 Interest.

Subpart 2432.7—Contract Funding

2432.703–1 General.
2432.704 Limitation of cost or funds.
2432.704–70 Incrementally funded fixed-price contracts.
2432.705 Contract clauses.
2432.705–70 Clause for limitation of Government's obligation.

Subpart 2432.9—Prompt Payment

2432.903 Policy.
2432.906 Making payments.
2432.908 Contract clauses.

AUTHORITY: 31 U.S.C. 3901–3905; 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46536, Nov. 17, 1988, unless otherwise noted.

2432.006 Reduction or suspension of contract payments upon finding of fraud.

2432.006–1 General.

The Senior Procurement Executive is the agency head for the purposes of FAR 32.006–1. In accordance with FAR 32.006–1(c), the Senior Procurement Executive may delegate the remedy coordination official duties to personnel in the Office of the Chief Procurement Officer at or above the Level IV of the Executive Service.

[77 FR 73530, Dec. 10, 2012]

2432.006–2 Definitions.

''Remedy coordination official'' means the Senior Procurement Executive.

[77 FR 73530, Dec. 10, 2012]

2432.006–3 Responsibilities.

(b) HUD personnel shall report immediately in writing when a contractor's request for advance, partial, or progress payments is suspected to be fraudulent. The report shall be made to the contracting officer and the remedy coordination official. The report shall describe the events, acts, and conditions that indicate the apparent or suspected violation and include all pertinent documents. The remedy coordination official will consult with, and refer cases to, the Office of the Inspector General for investigation, as appropriate. If appropriate, the Office of the Inspector General will provide a report to the Senior Procurement Executive.

[77 FR 73530, Dec. 10, 2012]

2432.006–4 Procedures.

The Senior Procurement Executive is the agency head for the purposes of FAR 32.006–4.

[77 FR 73530, Dec. 10, 2012]

2432.007 Contract financing payments.

(a) The Senior Procurement Executive is the agency head for the purposes of FAR 32.007(a).

[77 FR 73530, Dec. 10, 2012]

Subpart 2432.1—Non-Commercial Item Purchase Financing

2432.114 Unusual contract financing.

The Senior Procurement Executive is the agency head for the purpose of FAR 32.114.

[65 FR 3573, Jan. 21, 2000; 65 FR 6444, Feb. 9, 2000]

Subpart 2432.2—Commercial Item Purchase Financing

2432.201 Statutory authority.

The head of the contracting activity is the agency head for the purpose of FAR 32.201.

[65 FR 3573, Jan. 21, 2000]

Subpart 2432.4—Advance Payments for Non-Commercial Items

2432.402 General.

(e)(1) The determination and findings required by FAR 32.402(c)(1)(iii) shall be made by the HCA.

(2) Each advance payment situation shall be coordinated with the head of the cognizant accounting office, before authorization may be given, to ensure that there are controls in place to assure proper administration of advance payments.

[60 FR 46157, Sept. 5, 1995, as amended at 64 FR 46097, Aug. 23, 1999]

2432.407 Interest.

(d) The Senior Procurement Executive is the agency head's designee for the purposes of FAR 32.407(d).

[65 FR 3573, Jan. 21, 2000]

Subpart 2432.7—Contract Funding

2432.703–1 General.

(b)(1) Except as described herein, a fixed-price contract may be funded incrementally only if—

(i) Sufficient funds are not available to the Department at the time of contract award or exercise of option to fully fund the contract or option;

(ii) The contract (excluding any options) or any exercised option—

(A) Is for severable services;

(B) Does not exceed one year in length; and

(C) Is incrementally funded using funds available (unexpired) as of the date the funds are obligated; or

(iii) The contract uses funds available from multiple (2 or more) fiscal years and Congress has otherwise authorized incremental funding.

(2) An incrementally funded fixed-price contract shall be fully funded as soon as funds are available.

[77 FR 73530, Dec. 10, 2012]

2432.703–3 Contracts crossing fiscal years.

(b) The contracting officer may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed one year.

[65 FR 3573, Jan. 21, 2000]

2432.704 Limitation of cost or funds.

2432.704–70 Incrementally funded fixed-price contracts.

(a) Upon receipt of the contractor's notice under paragraph (c) of the clause at 2452.232–72, Limitation of Government's Obligation, the contracting officer shall promptly provide written notice to the contractor that the Government is—

(1) Allotting additional funds for continued performance and increasing the Government's limitation of obligation in a specified amount;

(2) Terminating the affected contract line items (CLINs) or contract, as applicable; or

(3) Considering whether to allot additional funds; and

(i) The contractor is required by the contract terms to stop work when the Government's limitation of obligation is reached; and

(ii) Any costs expended beyond the Government's limitation of obligation are at the contractor's risk.

(b) Upon learning that the contract will receive no further funds, the contracting officer shall promptly give the contractor written notice of the Government's decision and terminate the affected CLINs or contract, as applicable, for the convenience of the Government.

(c) The contracting officer shall ensure that, in accordance with paragraph (b) of the clause at 2452.232–72, ''Limitation of Government's obligation,'' sufficient funds are allotted to the contract to cover the total amount payable to the contractor in the event of termination for the convenience of the Government.

[77 FR 73531, Dec. 10, 2012]

2432.705 Contract clauses.

2432.705–70 Clause for limitation of Government's obligation.

The contracting officer shall insert the clause at 2452.232–72, ''Limitation of Government's Obligation,'' in solicitations and resultant incrementally funded fixed-price contracts as authorized by 2432.703–1. The contracting officer shall insert the information required in the table in paragraph (b) and the notification period in paragraph (c) of the clause.

[77 FR 73531, Dec. 10, 2012]

Subpart 2432.9—Prompt Payment

2432.903 Policy.

(a) The Senior Procurement Executive is the agency head's designee for the purposes of FAR 32.903(a).

[77 FR 73531, Dec. 10, 2012]

2432.906 Making payments.

(a) *General*. The authority to make the determination prescribed in FAR 32.906(a) is delegated to the HCA. Before making this determination, the HCA shall consult with the appropriate payment office to ensure that procedures are in place to permit timely payment.

[77 FR 73531, Dec. 10, 2012]

2432.908 Contract clauses.

(c)(1) The contracting officer shall insert the clause at 2452.232–73, Constructive Acceptance Period, in solicitations and contracts when the contracting officer has determined that an acceptance period longer than the 7 days provided for in the FAR clause at 52.232–25, ''Prompt Payment,'' is needed.

(2) The contracting officer shall insert a clause substantially the same as provided at 2452.232–70, Payment Schedule and Invoice Submission (Fixed-price), in fixed-price contracts other than performance-based contracts under which performance-based payments will be used.

(3) The contracting officer shall insert a clause substantially the same as provided at 2452.232–71, Voucher Submission, in all cost-reimbursement, time-and-materials, and labor-hour type solicitations and contracts. The contracting officer shall insert the billing period agreed upon with the contractor (see also the FAR clause at 52.216–7, ''Allowable Cost and Payment'').

(4) The Contracting Officer may substitute appropriate language for the clauses in paragraph (c)(2) and (3) of this clause when payment under the contract will be made on the basis of other than the submission of an invoice or voucher; e.g., directly from proceeds of property sales.

[77 FR 73531, Dec. 10, 2012]

PART 2433—PROTESTS, DISPUTES, AND APPEALS

Sec.

2433.000 Scope of part.

Subpart 2433.1—Protests

2433.102 General.
2433.102–70 Responsibility.
2433.103 Protests to the agency.
2433.104 Protests to GAO.
2433.106 Solicitation provision.

AUTHORITY: 31 U.S.C. 3551–3556; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 50 FR 46578, Nov. 8, 1985, unless otherwise noted.

2433.000 Scope of part.

This part identifies the responsible agents and sets forth procedural requirements for handling protests.

[51 FR 40333, Nov. 6, 1986]

Subpart 2433.1—Protests

2433.102 General.

2433.102–70 Responsibility.

With the exception of protests filed directly with the Department pursuant to FAR 33.103, the Office of General Counsel has responsibility for handling matters relating to protests against award of contracts by the Department. All written communications from the Department to the GAO or other adjudicating body shall be made by the Office of General Counsel. The Contracting Officer has responsibility for furnishing the Office of General Counsel with all information relating to a protest.

[64 FR 46097, Aug. 23, 1999]

2433.103 Protests to the agency.

(d)(2) Appeals of Contracting Officer protest decisions shall include the information required at FAR 33.103(d)(2)(i), (ii), (iii), (iv), (v) and (vi).

(d)(4)(i) Protesters may request an appeal of the Contracting Officer's decision on a protest. Such requests shall be made in writing to the cognizant HCA not later than 10 days after receipt of the Contracting Officer's decision.

(ii) The HCA, in consultation with the Office of General Counsel, shall make all independent reviews of the Contracting Officer's decision requested by protesters in accordance with FAR 33.103(d)(4) and provide the protester with the HCA's decision on the appeal.

(f)(1) A determination by the Contracting Officer to award a contract pending resolution of a protest as authorized by FAR 33.103 shall be approved by the HCA in consultation with the Office of General Counsel.

(f)(3) A determination by the Contracting Officer to not suspend performance of a contract pending resolution of a protest as authorized by FAR 33.103 shall be approved by the HCA in consultation with the Office of General Counsel.

[64 FR 46097, Aug. 23, 1999]

2433.104 Protests to GAO.

(a)(1) *General*. When advised by GAO of the receipt of a protest, the Office of General Counsel shall immediately inform the contracting activity. The Contracting Officer shall notify the Office of General Counsel upon receipt of the copy of the protest from the protestor.

(2) Upon receipt by the Department of a written request for a formal report relating to a protest, the Office of General Counsel, with appropriate assistance from the Contracting Officer, shall prepare and file the report in accordance with GAO requirements at 4 CFR part 21.

(c) *Protests after award*. Protests received after award shall be treated in the same manner as those filed with GAO before award in accordance with paragraphs (a)(1) and (a)(2) of this section.

(d) *Findings and notice*. When the Contracting Officer makes a determination to award a contract notwithstanding a protest as authorized by FAR 33.104(b)(1)(i-ii), or to continue contractor performance as authorized by FAR 33.104(c)(2), that determination of the intent to make an award or to continue contract performance shall be approved by the HCA after consultation with the Office of General Counsel.

(g) *Notice to GAO*. If the HCA proposes not to comply with a GAO recommendation concerning the resolution of a protest of a procurement award, prior to reporting to the Comptroller General concerning that decision, the HCA shall obtain the concurrence of the Office of General Counsel and the Senior Procurement Executive.

[50 FR 46578, Nov. 8, 1985, as amended at 51 FR 40333, Nov. 6, 1986; 57 FR 59790, Dec. 15, 1992]

2433.106 Solicitation provision.

The Contracting Officer shall insert the provision at 2452.233–70, Review of Contracting Officer Protest Decisions, in all solicitations for contracts expected to exceed the simplified acquisition threshold.

[64 FR 46097, Aug. 23, 1999]

PART 2434—MAJOR SYSTEM ACQUISITIONS

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2434.003 Responsibilities.

(a) The Senior Procurement Executive is responsible for establishing written procedures for implementation of A–109. Such procedures have been set out in internal Departmental directives.

[53 FR 46537, Nov. 17, 1988]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 2436.6—Architect-Engineer Services

Sec.
2436.602 Selection of firms for architect-engineer contracts.
2436.602–2 Evaluation boards.
2436.602–4 Selection authority.
2436.602–5 Short selection processes for contracts not to exceed the small purchase limitation.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 49 FR 7708, Mar. 1, 1984, unless otherwise noted.

Subpart 2436.6—Architect-Engineer Services

2436.602 Selection of firms for architect-engineer contracts.

2436.602–2 Evaluation boards.

(a) Each architect-engineer evaluation board, whether permanent or ad hoc (which may include preselection boards), shall consist of at least three voting members who are Federal employees from the appropriate program area or from Federal offices outside the program area as appropriate. One member of each board shall be appointed chairperson. Non-voting advisors may also be appointed, including private practitioners in architecture, engineering and related professions. The members of a permanent board shall be appointed for a period of two years. Appointment shall be made by the following authorities with copies of appointment memoranda furnished to the appropriate contracting activity:

(1) *Assistant Secretary* or equivalent for boards appointed at the Headquarters level;

(2) The cognizant program office head for boards appointed at the field level.

(c) *Conflict of interest.* Each board member, whether voting or nonvoting, shall be advised of, and presumed to be familiar with the regulations at 24 CFR part 0, Standards of Conduct, regarding conflicts of interest. If at any time during the selection process a board member encounters a situation with one or more of the firms being considered that might be or might appear to be a conflict of interest, he or she will disqualify him or herself and call it to the attention of the chairperson for resolution and proper action. The chairperson will refer the matter to legal counsel.

(d) *Confidentiality.* The evaluation board is to be insulated from outside pressures, to the extent practical. No person having knowledge of the activities of the board shall divulge information concerning the deliberations of the board to any other persons not having a need to know such information.

[49 FR 7708, Mar. 1, 1984, as amended at 57 FR 59790, Dec. 15, 1992; 60 FR 46157, Sept. 5, 1995; 65 FR 3576, Jan. 21, 2000]

2436.602–4 Selection authority.

(a) The final selection decision shall be made by the cognizant Primary Organization Head in headquarters, or field program office head.

[65 FR 3577, Jan. 21, 2000]

2436.602–5 Short selection processes for contracts not to exceed the small purchase limitation.

The short selection process described in FAR 36.602–5(a) is authorized for use for contracts not expected to exceed the simplified acquisition threshold.

[49 FR 7708, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984, as amended at 57 FR 59791, Dec. 15, 1992; 64 FR 46098, Aug. 23, 1999]

PART 2437—SERVICE CONTRACTING

Subpart 2437.1—Service Contracts—General

Sec.
2437.110 Solicitation provisions and contract clauses.

Subpart 2437.2—Advisory and Assistance Services

2437.204 Guidelines for determining availability of personnel.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Subpart 2437.1—Service Contracts—General

2437.110 Solicitation provisions and contract clauses.

(e)(1) The Contracting Officer shall insert the clause at 2452.237–70, Key Personnel, in solicitations and contracts when it is necessary for contract performance to identify Contractor Key personnel.

(2) The Contracting Officer shall insert the clause at 2452.237–73, Conduct of Work and Technical Guidance, in all solicitations contracts for services other than commercial services awarded pursuant to FAR part 12.

(3) The contracting officer shall insert the clause at 2452.237–75, Access to HUD Facilities, in all solicitations and contracts when contractor employees, including subcontractors and consultants, will be required to regularly work in or have access to any HUD facilities (as distinct from nongovernment employee visitors to government facilities).

(4) The Contracting Officer shall insert the clause at 2452.237–77, Temporary Closure of HUD Facilities, in all solicitations and contracts where contractor personnel will be working onsite in any HUD office.

[77 FR 73531, Dec. 10, 2012]

Subpart 2437.2—Advisory and Assistance Services

2437.204 Guidelines for determining availability of personnel.

(a) The Senior Procurement Executive is the agency head for the purpose of FAR 37.204.

[71 FR 2437, Jan. 13, 2006]

PART 2439—ACQUISITION OF INFORMATION TECHNOLOGY

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

2439.107 Contract clauses.

(a) The contracting officer shall insert the clause at 2452.239–70, Access to HUD Systems, in solicitations and contracts when the contract will require contractor employees, including subcontractors and consultants, to have access to any HUD information system(s) as defined in the clause.

(b) The contracting officer shall insert the clause at 48 CFR 2452.239–71, Information Technology Virus Security, in solicitations and contracts under which the contractor will provide information technology hardware, software or data products.

[64 FR 46098, Aug. 23, 1999, as amended at 65 FR 3577, Jan. 21, 2000; 77 FR 73531, Dec. 10, 2012]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2442—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 2442.3—Contract Administration Office Functions

Sec.
2442.302–70 Contract clause.

Subpart 2442.7—Indirect Cost Rates

2442.705 Final indirect cost rates.
2442.705–70 Contract clause.

Subpart 2442.11—Production Surveillance and Reporting

2442.1107 Contract clause.

Subpart 2442.15—Contractor Performance Information

2442.1502 Policy.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46537, Nov 17, 1988, unless otherwise noted.

Subpart 2442.3—Contract Administration Office Functions

2442.302–70 Contract clause.

The contracting officer shall include clause 2452.242–72, Post-award Orientation Conference, in solicitations and contracts when the contractor will be required to attend a post-award orientation conference. The contracting officer shall indicate whether the contractor must attend the conference in person or via electronic communication.

[77 FR 73532, Dec. 10, 2012]

Subpart 2442.7—Indirect Cost Rates

2442.705 Final indirect cost rates.

2442.705–70 Contract clause.

The Contracting Officer shall insert the clause at 2452.242–70, Indirect Costs, in cost-reimbursement type solicitations and contracts when it is determined that the Contractor will be compensated for negotiated or provisional indirect cost rates pending establishment of final indirect cost rates.

Subpart 2442.11—Production Surveillance and Reporting

2442.1107 Contract clause.

(a) The Contracting Officer shall insert a clause substantially the same as the clause at 2452.242–71, Contract Management System, in solicitations and contracts when all of the following conditions apply:

(1) The contract exceeds $500,000, including all options;

(2) The contract requires services of an analytical nature (e.g., applied social science research); and

(3) The contract requires the delivery of an overall end product (e.g., evaluation, study, model).

(b) The Contracting Officer shall use the basic clause for cost type contracts for the services described in paragraph (a) of this section. The clause shall be used with its alternate for fixed-price type contracts for the services described in paragraph (a) of this section.

(c) The Contracting Officer may use such a clause in contracts with a total value of $500,000 or less.

(d) The clause shall not be used in contracts for information technology services.

[71 FR 2437, Jan. 13, 2006]

Subpart 2442.15—Contractor Performance Information

SOURCE: 64 FR 46098, Aug. 23, 1999, unless otherwise noted.

2442.1502 Policy.

The Chief Procurement Officer is responsible for establishing past performance evaluation procedures and systems as required by FAR 42.1502 and 42.1503.

PART 2446—QUALITY ASSURANCE

Subpart 2446.5—Acceptance

Sec.
2446.502 Responsibility for acceptance.

2446.502–70 Contract clause.

Subpart 2446.7—Warranties

2446.710 Contract clauses.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46537, Nov. 17, 1988, unless otherwise noted.

Subpart 2446.5—Acceptance

2446.502 Responsibility for acceptance.

2446.502–70 Contract clause.

The Contracting Officer shall insert the clause at 2452.246–70, Inspection and Acceptance, in all solicitations and contracts.

[71 FR 2437, Jan. 13, 2006]

Subpart 2446.7—Warranties

2446.710 Contract clauses.

(c)(1) The contracting officer may include a clause substantially the same as FAR 52.246–19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, whenever it is in the Government's interest.

[57 FR 59791, Dec. 15, 1992]

PART 2448—VALUE ENGINEERING

Subpart 2448.1—Policies and Procedures

Sec.
2448.102 Policies.
2448.103 Processing value engineering change proposals.
2448.104–3 Sharing collateral savings.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 71 FR 2437, Jan. 13, 2006, unless otherwise noted.

2448.102 Policies.

(a) The authority of the agency head to exempt contracts from including Value Engineering (VE) procedures and processes under 48 CFR 48.102(a) is delegated to the HCA for individual (case-by-case) exemptions and to the Senior Procurement Executive for class exemptions.

(b) The Senior Procurement Executive is responsible for managing and monitoring HUD's VE efforts.

2448.103 Processing value engineering change proposals.

Upon receipt of a Value Engineering Change Proposal (VECP), the Contracting Officer shall promptly forward it to the program office responsible for the contract, indicating:

(a) The date the VECP was received;

(b) The date by which the contractor must be informed of the government's acceptance or rejection of the VECP, unless additional time is required for evaluation;

(c) The date by which the Contracting Officer must know of the technical officer's decision in order to timely accept or reject the VECP;

(d) The need for information required to inform the contractor if the VECP is to be rejected or if additional time is needed to evaluate the VECP;

(e) The potential for awarding concurrent, future, or collateral savings to the contractor, if the VECP is accepted;

(f) That if the VECP is accepted, precise information will be needed with regard to the type of savings, and government costs, that can be expected from its acceptance;

(g) The need for a procurement request setting forth the specification changes to be used in a contract modification accepting the VECP in whole or in part; and

(h) The need for additional funds, if acceptance of the VECP will result in an increase in the cost of contract performance.

2448.104–3 Sharing collateral savings.

(a) The authority of the HCA to determine that the cost of calculating and tracking collateral savings will exceed the benefits to be derived under 48 CFR 48.104–3(a) is delegated to the Contracting Officer.

PART 2449—TERMINATION OF CONTRACTS

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 49 FR 7708, Mar. 1, 1984, unless otherwise noted.

Subpart 2449.1—General Principles

2449.111 Review of proposed settlements.

The Head of the Contracting Activity shall establish internal procedures to ensure the independent review of proposed termination settlements in excess of $100,000.

PART 2451—USE OF GOVERNMENT SOURCES BY CONTRACTORS

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 64 FR 46098, Aug. 23, 1999, unless otherwise noted.

Subpart 2451.70—Contractor Use of Government Discount Travel Rates

2451.7001 Contract clause.

The Contracting Officer shall insert the clause at 48 CFR 2452.251–70, Contractor Employee Travel, in cost-reimbursement solicitations and contracts involving contractor travel.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2452.201–70 Coordination of data collection activities.

Subpart 2452.2—Texts of Provisions and Clauses

Sec.
2452.203–70 Prohibition against the use of government employees.
2452.204–70 Preservation of, and access to, contract records (tangible and electronically stored information (ESI) formats).
2452.208–71 Reproduction of reports.
2452.209–70 Potential organizational conflicts of interest.
2452.209–71 Limitation on future contracts.
2452.209–72 Organizational conflicts of interest.
2452.211–70 Effective date and contract period.
2452.215–70 Proposal content.
2452.215–71 Relative importance of technical evaluation factors to cost or price.
2452.215–72 Evaluation of small business participation.
2452.216–70 Estimated cost, base fee, and award fee.
2452.216–71 Award fee.
2452.216–72 Determination of award fee earned.
2452.216–73 Performance evaluation plan.
2452.216–74 Distribution of award fee.
2452.216–75 Unpriced task orders.
2452.216–76 Minimum and maximum quantities and amounts for order.
2452.216–77 Estimated quantities—requirements Contract.
2452.216–78 Ordering procedures.
2452.216–79 Estimated cost (no fee).
2452.216–80 Estimated cost and fixed-fee.
2452.219–70 Small, small disadvantaged, and women-owned small business subcontracting plan.
2452.219–71 Notification of competition limited to eligible 8(a) concerns—Alternate III to FAR 52.219–18.
2452.219–72 Section 8(a) direct awards (Deviation).
2452.219–73 Incorporation of subcontracting plan.
2452.219–74 Small business subcontracting goals.
2452.222–70 Accessibility of meetings, conferences, and seminars to persons with disabilities.
2452.227–70 Government information.
2452.232–70 Payment schedule and invoice submission (Fixed-price).
2452.232–71 Voucher submission.
2452.232–72 Limitation of Government's obligation.
2452.232–73 Constructive acceptance period.
2452.233–70 Review of contracting officer protest decisions.
2452.237–70 Key personnel.
2452.237–73 Conduct of work and technical guidance.
2452.237–75 Access to HUD facilities.
2452.237–77 Temporary closure of HUD facilities.
2452.239–70 Access to HUD systems.
2452.239–71 Information Technology Virus Security.
2452.242–70 Indirect costs.
2452.242–71 Contract management system.
2452.246–70 Inspection and acceptance.
2452.251–70 Contractor employee travel.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46538, Nov. 17, 1988, unless otherwise noted.

2452.201–70 Coordination of data collection activities.

As prescribed in 2401.106–70, insert the following clause in solicitations and contracts where the contractor is required to collect identical information from ten or more public respondents:

COORDINATION OF DATA COLLECTION ACTIVITIES (APR 1984)

If it is established at award or subsequently becomes a contractual requirement to collect identical information from ten or more public respondents, the Paperwork Reduction Act (44 U.S.C. 3501–3520) applies. In that event, the Contractor shall not take any action to solicit information from any of the public respondents until notified in writing by the Contracting Officer that the required Office of Management and Budget (OMB) final clearance was received.

(End of clause)

[53 FR 46538, Nov. 17, 1988. Redesignated and amended at 77 FR 73537, Dec. 10, 2012]

Subpart 2452.2—Texts of Provisions and Clauses

2452.203–70 Prohibition against the use of government employees.

As prescribed in 2403.670, insert the following clause in all solicitations and contracts:

PROHIBITION AGAINST THE USE OF GOVERNMENT EMPLOYEES (FEB 2006)

In accordance with Federal Acquisition Regulation 3.601, contracts are not to be awarded to government employees or a business concern or other organization owned or substantially owned or controlled by one or more government employees. For the purposes of this contract, this prohibition against the use of government employees includes any work performed by the contractor or any of its employees, subcontractors, or consultants.

(End of clause)

[71 FR 2438, Jan. 13, 2006]

2452.204–70 Preservation of, and access to, contract records (tangible and electronically stored information (ESI) formats).

As prescribed in 2404.7001, insert the following clause:

PRESERVATION OF, AND ACCESS TO, CONTRACT RECORDS (TANGIBLE AND ELECTRONICALLY STORED INFORMATION (ESI) FORMATS) (DEC 2012)

(a) For the purposes of this clause—

Contract records means information created or maintained by the contractor in the performance of the contract. Contract records include documents required to be retained in accordance with FAR 4.703 and other information generated or maintained by the contractor that is pertinent to the contract and its performance including, but not limited to: email and attachments, formal and informal correspondence, calendars, notes, reports, memoranda, spreadsheets, tables, telephone logs, forms, survey, books, papers, photographs, drawings, machine-readable materials, and data. Contract records may be maintained as electronically stored information or as tangible materials. Contract records may exist in either final or any interim version (*e.g.*, drafts that have been circulated for official purposes and contain unique information, such as notes, edits, comments, or highlighting). Contract records may be located or stored on the contractor's premises or at off-site locations.

Electronically stored information (ESI) means any contract records that are stored on, or generated by, an electronic device, or contained in electronically accessible media, either owned by the contractor, subcontractor(s), or employees of the contractor or subcontractor(s) regardless of the physical location of the device or media (*e.g.*, offsite servers or data storage).

ESI devices and media include, but are not be limited to:

(1) Computers (mainframe, desktop, and laptop);

(2) Network servers, including shared and personal drives;

(3) Individual email accounts of the contractor's principals, officers, and employees, including all folders contained in each email account such as ''inbox,'' ''outbox,'' ''drafts,'' ''sent,'' ''trash,'' ''archive,'' and any other folders;

(4) Personal data assistants (PDAs);

(5) External data storage devices including portable devices (*e.g.*, flash drive); and

(6) Data storage media (magnetic, *e.g.*, tape; optical, *e.g.*, compact disc, microfilm, etc.).

Tangible materials means contract records that exist in a physical (*i.e.*, non-electronic) state.

(b) If during the period of performance of this contract, HUD becomes, or anticipates becoming, a party to any litigation concerning matters related to records maintained or generated by the Contractor in the performance of this contract, the Contracting Officer may provide the contractor with a written (either hardcopy or email) preservation hold notice and certification of compliance with the preservation hold notice. Upon receipt of the hold notice, the Contractor shall immediately take the following actions—

(1) Discontinue any alteration, overwriting, deletion, or destruction of all tangible materials and ESI.

(2) Preserve tangible materials and ESI. The contractor shall preserve ESI in its ''native'' form to preserve metadata (*i.e.*, creation and modification history of a document).

(3) Identify all individuals who possess or may possess tangible materials and ESI related to this matter, including contractor employees, subcontractors, and subcontractor employees. The contractor shall provide the names of all such individuals via email to the HUD official indicated in the notice.

(4) Document in writing the contractor's efforts to preserve tangible materials and ESI. It may be useful to maintain a log documenting preservation efforts.

(5) Complete the certification of compliance with the preservation hold notice upon receipt and return it to the identified contact person; and

(6) Upon the request of the Contracting Officer, provide the Contracting Officer or other HUD official designated by the Contracting Officer with any of the information described in this clause. The contractor shall immediately confirm receipt of such request. The contractor shall describe in detail any records that the contractor knows or believes to be unavailable and provide a detailed explanation of why they are unavailable, and if known, their location.

(c)(1) If any request for records pursuant to paragraph (b)(6) of this clause causes an increase in the estimated cost or price or the time required for performance of any part of the work under this contract, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(2) The Contractor must assert its right to an adjustment under this clause within ____ [*Contracting Officer insert period; 30 days if no other period inserted*] from the date of receipt of the Contracting Officer's request made pursuant to paragraph (b)(6) of this clause. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a request submitted before final payment of the contract.

(3) Failure to agree to any adjustment shall be a dispute under the ''Disputes'' clause of this contract. However, nothing in this clause shall excuse the contractor from providing the records requested by the Contracting Officer.

(e) The Contractor shall include this clause in all subcontracts.

(End of clause)

Alterate I (DEC 2012) For cost-reimbursement type contracts, substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c)(1) If any request for records pursuant to paragraph (b)(6) of this clause causes an increase in the estimated cost or price or the time required for performance of any part of the work under this contract, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in any one of the following and modify the contract accordingly—

(i) Estimated cost;

(ii) Delivery or completion schedule, or both; (ii) Amount of any fixed fee; or

(iii) Other affected terms.

Alternate II (DEC 2012) For labor-hour or time-and-materials type contracts, substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c)(1) If any request for records pursuant to paragraph (b)(6) of this clause causes an increase in the estimated cost or price or the time required for performance of any part of the work under this contract, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in any one or more of the following and will modify the contract accordingly:

(i) Ceiling price;

(ii) Hourly rates;

(iii) Delivery schedule; or

(iv) Other affected terms.

[77 FR 73532, Dec. 10, 2012]

2452.208–71 Reproduction of reports.

As prescribed in 2437.110(b), insert the following clause in solicitations and contracts where the Contractor is required to produce, as an end product, publications or other written materials.

REPRODUCTION OF REPORTS (APR 1984)

In accordance with Title I of the Government Printing and Binding Regulations, printing of reports, data, or other written material, if required herein, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is determined by multiplying pages times copies. A production unit is one set, size 8½ by 11 inches or less, printed on one side only and in one color. All copy preparation to produce camera ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils, masters, and plates which are to be used in single unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10¾ by 14¼ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducibles (camera ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data, or other written materials.

(End of clause)

[53 FR 46538, Nov. 17, 1988. Redesignated at 71 FR 2440, Jan. 13, 2006]

2452.209–70 Potential organizational conflicts of interest.

As prescribed in 2409.507–1, the Contracting Officer may insert a provision substantially the same as follows in solicitations:

POTENTIAL ORGANIZATIONAL CONFLICTS OF INTEREST (FEB 2000)

(a) The Contracting Officer has determined that the proposed contract contains a potential organizational conflict of interest. Offerors are directed to FAR subpart 9.5 for

detailed information concerning organizational conflicts of interest.

(b) The nature of the potential conflict of interest is [*Contracting Officer insert description*]:

(c) Offerors shall provide a statement which describes concisely all relevant facts concerning any past, present or planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed under the proposed contract and bearing on whether the offeror has a possible organizational conflict of interest with respect to:

(1) Being able to render impartial, technically sound, and objective assistance or advice, or

(2) Being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would avoid or mitigate such organizational conflict.

(d) No award shall be made until any potential conflict of interest has been neutralized or mitigated to the satisfaction of the Contracting Officer.

(e) Refusal to provide the requested information or the willful misrepresentation of any relevant information by an offeror shall disqualify the offeror from further consideration for award of a contract under this solicitation.

(f) If the Contracting Officer determines that a potential conflict can be avoided, effectively mitigated, or otherwise resolved through the inclusion of a special contract clause, the terms of the clause will be subject to negotiation.

(End of provision)

[65 FR 3577, Jan. 21, 2000]

2452.209–71 Limitation on future contracts.

As prescribed in 2409.507–2, the Contracting Officer may insert a clause substantially the same as follows in solicitations and contracts for services:

LIMITATION ON FUTURE CONTRACTS (FEB 2000)

(a) The Contracting Officer has determined that this contract may give rise to potential organizational conflicts of interest as defined at FAR subpart 9.5.

(b) The nature of the potential conflict of interest is [*Contracting Officer insert description*]

(c) If the contractor, under the terms of this contract or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under any ensuing HUD contract.

(d) Other restrictions—[*Contracting Officer insert description*].

(e) The restrictions imposed by this clause shall remain in effect until [*Contracting Officer insert period or date*].

(End of clause)

[65 FR 3577, Jan. 21, 2000]

2452.209–72 Organizational conflicts of interest.

As prescribed in 2409.508–2, insert the following contract clause in all contracts.

ORGANIZATIONAL CONFLICTS OF INTEREST (APR 1984)

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a Government contract and a Contractor's organizational, financial, contractual or other interests are such that:

(1) Award of the contract may result in an unfair competitive advantage; or

(2) The Contractor's objectivity in performing the contract work may be impaired.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict.

The Government may, however, terminate the contract for the convenience of the Government if it would be in the best interest of the Government.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Government may terminate the contract for default.

(d) The provisions of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

(End of clause)

2452.211–70 Effective date and contract period.

As prescribed in 2411.404(a), insert the following clause:

EFFECTIVE DATE AND CONTRACT PERIOD (FEB 2006)

(a) This contract shall be effective on _____ [Contracting Officer insert date at award].

(b) The contractor shall complete all work including all deliveries by _____ [Contracting Officer insert date at award].

(c) Delivery dates for specific services and deliverables shall be as set forth in the Schedule.

(End of clause)

Alterate I (FEB 2006). As prescribed in 2411.404(b), add the following paragraph (d):

(d) In accordance with the clause at 52.217–9, ''Option to Extend the Term of the Contract,'' the contract may be extended for the following periods:

Option No.	Period
[list]	[dates].

(End of clause)

[71 FR 2438, Jan. 13, 2006]

2452.215–70 Proposal Content.

As prescribed in 2415.209(a), insert a provision substantially the same as the following:

PROPOSAL CONTENT (FEB 2000)

(a) Proposals shall be submitted in two parts as described in paragraphs (b) and (c) below. Each of the parts must be complete in itself so that evaluation of each part may be conducted independently, and so that the technical and management part may be evaluated strictly on its own merit. Proposals shall be submitted in the format, if any, prescribed elsewhere in this solicitation. Proposals shall be enclosed in sealed packaging and addressed to the office specified in the solicitation. The offeror's name and address, the solicitation number and the date and time specified in the solicitation for proposal submission must appear in writing on the outside of the package.

(b) Proposals shall be submitted in original and [insert number] copies of Part I and [insert number] copies of Part II.

(c) Part I—Technical and Management.

(1) *Prior experience*. The offeror shall provide evidence of the offeror's (i.e., firm's or organization's) prior and current experience in performing the work and/or providing the deliverables required by the solicitation.

(2) *Past Performance*. The offeror shall provide evidence of the offeror's past performance in accomplishing work—including meeting delivery dates and schedules—the same as, or substantially similar to, that required by the solicitation. The offeror shall provide references as follows [Contracting Officer insert specific instruction for reference check information required].

(3) *Personnel qualifications*. The offeror shall provide the names, position descriptions and information to support the qualifications—including relevant experience, specialized training and education—of all proposed key personnel (see the clause entitled ''Key Personnel'' in this solicitation for further definition). The term ''personnel'' shall include any proposed consultants and subcontractor employees who will perform duties of key personnel.

(4) *Management capability*. The offeror shall provide evidence of his/her organization's ability to manage the work required under the proposed contract. The offeror shall describe how the work will be organized, the proposed staffing and the responsibilities and existing commitments of proposed staff.

(5) *Technical capability*. The offeror shall provide a detailed description of how he/she proposes to conduct the work required under the proposed contract.

(6) *Mandatory minimum requirements*. The offeror shall provide evidence, including copies of documents, as appropriate of [contracting officer insert description of requirement(s), e.g., licenses, minimum experience, etc., or delete this paragraph if not applicable].

(d) Part II—Business Proposal.

(1) The Offeror shall complete the Representations and Certifications provided in Section K of this solicitation and include them in this Part II.

(2) The offeror shall provide information to support the offeror's proposed costs or prices as prescribed elsewhere in this Section L.

(End of provision)

Alterate I (OCT 1999). As prescribed in 2415.209(a), if the award selection will be made through the lowest-priced technically acceptable proposal method, substitute paragraph (c) with the following:

(c) Part I—Technical and Management Information.

(1) *Prior experience*. The offeror shall provide evidence that the offeror's (i.e., firm's

or organization's) prior experience meets the following minimum standards: [contracting officer insert specific experience requirements].

(2) *Past performance*. The offeror shall provide evidence of the offeror's past performance as follows: [contracting officer insert specific performance requirements]. The offeror shall provide references as follows [contracting Officer insert specific instruction for reference check information required].

(3) *Personnel qualifications*. The offeror shall provide the names, position descriptions and evidence that proposed key personnel (see the clause entitled ''Key Personnel'' elsewhere in this solicitation for definition) meet the minimum qualifications described below. The term ''personnel'' includes any proposed consultants and subcontractor employees who will perform duties of key personnel. The minimum qualifications are: [contracting officer insert descriptions]

(4) *Management capability*. The offeror shall provide evidence of his/her organization's ability to manage the work required under the proposed contract. The offeror shall describe how the work will be organized, the proposed staffing and the responsibilities and existing commitments of proposed staff.

(End of provision)

Alterate II (OCT 1999). As prescribed in 2415.209(a), if the proposed contract requires work on, or access to, sensitive automated systems as described in 2452.239–70, add the following subparagraph, numbered sequentially, to paragraph (c):

The offeror shall describe in detail how the offeror will maintain the security of automated systems as required by clause at 48 CFR 2452.239–70 in Section I of this solicitation.

Alterate III (DEC 2012). As prescribed in 2415.209(a), add the following paragraph (e) when the size of Part I, Technical and Management, offers will be limited:

(e) Size limit of Part I, Technical and Management.

(1) Offerors shall limit Part I, Technical and Management, of their initial offers to ____ [*Contracting Officer insert number*] pages, except for the information specifically exempted in paragraph (e)(3) of this clause. Offerors are cautioned that if Part I of their offers exceeds this limit, the Government will evaluate only the information contained in the pages up through the permitted number. Pages beyond that limit will not be evaluated.

(2) A page shall consist of one side of a single sheet of 8½″ × 11″ paper, single spaced, using not smaller than 12 point type font, and having margins at the top, bottom, and sides of the page of no less than one inch in width.

(3) The following information is exempt from the limitation set forth in paragraph (1): [*Contracting Officer list exemptions or enter ''None''*].

(4) Offerors are encouraged to use recycled paper and to use both sides of the paper (see the FAR clause at 52.204–4).

(End of provision)

[61 FR 19472, May 1, 1996, as amended at 64 FR 46098, Aug. 23, 1999; 65 FR 3573, Jan. 21, 2000; 77 FR 73533, Dec. 10, 2012]

2452.215–71 Relative importance of technical evaluation factors to cost or price.

As prescribed in 2415.209(a)(2), insert the following provision:

RELATIVE IMPORTANCE OF TECHNICAL EVALUATION FACTORS TO COST OR PRICE (DEC 2012)

For the purposes of evaluating offers and the selection of the contractor or contractors under this solicitation, the relative merit of the offeror's technical proposal as evaluated in accordance with the technical evaluation factors listed herein shall be considered [*Contracting Officer insert one of the following:* ''significantly more important than,'' ''approximately equal to,'' or ''significantly less important than''] cost or price. While the proposed cost or price will not be assigned a specific weight, it shall be considered a significant criterion in the overall evaluation of proposals.

[77 FR 73533, Dec. 10, 2012]

2452.215–72 Evaluation of small business participation.

As prescribed in 2415.370, insert the following provision:

EVALUATION OF SMALL BUSINESS PARTICIPATION (DEC 2012)

(a) In addition to the technical and management evaluation factors set forth in this solicitation, the Government will evaluate the extent to which all offerors identify and commit to using small businesses in the performance of the contract, whether through joint ventures or teaming arrangements, or as subcontractors. The evaluation shall consider the following:

(1) The extent to which small businesses are specifically identified in proposals;

(2) The extent of commitment to use small businesses (for example, enforceable commitments will be weighted more heavily than non-enforceable ones);

(3) The complexity and variety of the work small businesses are to perform;

(4) The realism of the proposal;

(5) Past performance of the offerors (other than small businesses) in complying with requirements of the clauses at FAR 52.219–8, Utilization of Small Business Concerns, and 52.219–9, Small Business Subcontracting Plan; and

(6) The extent of participation of small businesses in terms of the total value of the contract.

(b) Offerors that are required to submit a subcontracting plan pursuant to the clause at FAR 52.219–9 shall include the small businesses proposed as subcontractors for evaluation under this provision in their subcontracting plan.

(End of Provision)

[77 FR 73533, Dec. 10, 2012]

2452.216–70 Estimated cost, base fee and award fee.

As prescribed in 2416.406(e)(1), insert the following clause in all cost-plus-award-fee contracts:

ESTIMATED COST, BASE FEE AND AWARD FEE (FEB 2006)

(a) The estimated cost of this contract is $[*insert amount*].

(b) A base fee is payable in the amount of $[*insert amount*]. The government will make payment of the base fee in [*insert number*] increments on the schedule set forth in the Performance Evaluation Plan established by the government. The amount payable shall be based on the progress toward completion of contract tasks as determined by the Contracting Officer. Payment of the base fee is subject to any withholdings as provided for elsewhere in this contract.

(c) A maximum award fee available for payment is $[*insert amount*]. The government shall make payments of the award fee in accordance with the schedule established in the Performance Evaluation Plan and the Evaluation Period(s) set forth in the Distribution of Award Fee clause.

(End of clause)

[71 FR 2438, Jan. 13, 2006]

2452.216–71 Award fee.

As prescribed in 2416.406(e)(2), insert the following clause in all fixed-price-award-fee contracts:

AWARD FEE (FEB 2006)

In addition to the fixed-price for this contract set forth in the Schedule, a maximum award fee of $[insert amount] is available for payment. The government shall make payments of the award fee in accordance with the schedule established in the Performance Evaluation Plan and the Evaluation Period(s) set forth in the Distribution of Award Fee clause.

(End of clause)

[71 FR 2438, Jan. 13, 2006]

2452.216–72 Determination of award fee earned.

As prescribed in 2416.406(e)(3), insert the following clause in all award fee contracts:

DETERMINATION OF AWARD FEE EARNED (FEB 2006)

(a) At the conclusion of each evaluation period specified in the Performance Evaluation Plan, the government shall evaluate the contractor's performance and determine the amount, if any, of award fee earned by the contractor. The amount of award fee to be paid will be determined by the designated Fee Determination Official's (FDO's) judgmental evaluation in accordance with the criteria set forth in the Performance Evaluation Plan. This decision will be made unilaterally by the government. In reaching this decision, the FDO may consider any justification of award fee the contractor submits, provided that the justification is submitted within [insert number] days after the end of an evaluation period. The FDO determination shall be in writing, shall set forth the basis of the FDO's decision, and shall be sent to the contractor within [*insert number*] days after the end of the evaluation period.

(b) The FDO may specify in any fee determination that any amount of fee not earned during the evaluation period may be accumulated and allocated for award during a later evaluation period. The Distribution of Award Fee clause shall be amended to reflect the allocation.

(End of clause)

[71 FR 2438, Jan. 13, 2006]

2452.216–73 Performance evaluation plan.

As prescribed in 2416.406(e)(3), insert the following clause in all award fee contracts:

PERFORMANCE EVALUATION PLAN (AUG 1987)

(a) The Government shall unilaterally establish a Performance Evaluation Plan that will provide the basis for the determination of the amount of award fee awarded under the contract. The Plan shall set forth evaluation criteria and percentage of award fee available for (1) technical functions, including schedule requirements if appropriate, (2) management functions; and, (3) cost functions. The Government shall furnish a copy of the Plan to the Contractor (*insert number*) days before the start of the first evaluation period.

(b) The Government may unilaterally change the award fee plan prior to the beginning of subsequent evaluation periods. The Contracting Officer will provide such changes in writing to the Contractor prior to the beginning of the applicable evaluation period.

(End of clause)

[53 FR 46538, Nov. 17, 1988, as amended at 64 FR 46098, Aug. 23, 1999; 71 FR 2438, Jan. 13, 2006]

2452.216–74 Distribution of award fee.

As prescribed in 2416.406(e)(3), insert the following clause in all award fee contracts:

DISTRIBUTION OF AWARD FEE (FEB 2006)

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

Evaluation Period: [*insert time period*]

Available Award Fee: [*insert dollar amount*]

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

(End of clause)

Alterate I (FEB 2006). As prescribed in 2416.406(e)(3), add paragraph (c):

(c) The contract clauses required for cost-reimbursement contracts shall be modified for use under award fee contracts as cited below:

(1) The term ''base fee and award fee'' shall be substituted for ''fixed fee'' where it appears in the clause at FAR 52.243–2, Changes—Cost Reimbursement.

(2) The term ''base fee'' shall be substituted for ''fee'' where it appears in the clauses at FAR 52.232–20, Limitation of Costs, and FAR 52.232–22, Limitation of Funds.

(3) The phrase ''base fee, if any, and such additional fee as may be awarded as provided for in the Schedule'' shall be substituted for the term ''fee'' whenever it appears in the clause at FAR 52.216–7, Allowable Cost and Payment.

(End of clause)

[71 FR 2438, Jan. 13, 2006]

2452.216–75 Unpriced task orders.

As prescribed in 2416.506–70(a), insert the following clause:

UNPRICED TASK ORDERS (FEB 2006)

(a) Prior to the issuance of a task order under this contract, it is anticipated that the government and the contractor will reach agreement on the price or total cost and fee (if applicable) for the services to be provided under the order. The Contracting Officer may authorize commencement of work prior to final agreement on cost or price. In such case, the contractor shall immediately commence performance of the services specified in the order and shall submit a pricing proposal within 15 days of receipt of the task order. Upon completion of negotiations, the final negotiated cost or price will be set forth in a supplemental agreement that is executed by the contractor and the Contracting Officer. Failure to agree upon the cost or price shall be considered a dispute subject to the Disputes clause of this contract.

(b) Unpriced task orders shall indicate a ''not-to-exceed'' amount for the order; however, such amount shall not exceed 50 percent of the estimated cost of the task order. The task order shall only require the Contracting Officer's signature, but shall also comply with all other task order requirements. Unpriced task orders shall indicate the date by which the government anticipates that the cost or price of the order will be definitized.

(End of clause)

[71 FR 2439, Jan. 13, 2006]

2452.216–76 Minimum and maximum quantities or amounts for order.

As prescribed in 2416.506–70(b), insert the following clause:

MINIMUM AND MAXIMUM QUANTITIES OR AMOUNTS FOR ORDER (DEC 2012)

(a) The minimum quantity or amount to be ordered under this contract shall not be less than [*contracting officer insert quantity or amount*].

(b) The maximum quantity or amount to be ordered under this contract shall not exceed [*contracting officer insert quantity or amount*].

(End of clause)

[77 FR 73533, Dec. 10, 2012]

2452.216–77 Estimated quantities—requirements contract.

As prescribed in 2416.506–70(c), insert the following provision:

ESTIMATED QUANTITIES—REQUIREMENTS CONTRACT (FEB 2006)

In accordance with FAR 52.216–21(a), the government provides the following estimates:

The estimated quantity or amount of supplies or services the government may order during the ordering period of this contract is _____ [*insert description of item(s) or unit(s) and the estimated number of units or the dollar value*].

The maximum quantity or amount of supplies or services the government may order during the ordering period of this contract is _____ [*insert description of item(s) or unit(s) and the estimated number of units or the dollar value*].

(End of provision)

[71 FR 2439, Jan. 13, 2006]

2452.216–78 Ordering procedures.

As prescribed in 2416.506–70(d), insert the following provision:

ORDERING PROCEDURES (FEB 2006)

(a) Orders issued under this contract may be placed in writing or via [*Contracting Officer to insert authorized ordering methods, e.g., telephone, facsimile (fax) machine, electronic mail (e-mail)*].

(End of clause)

Alterate I (FEB 2006). As prescribed in 2416.506–70(d), add paragraph (b):

(b) In addition to the Contracting Officer, the following individuals are authorized to issue orders under this contract:

_____

_____

_____

[Continue as necessary]

(End of clause)

Alterate II (FEB 2006). As prescribed in 2416.506–70(d), add paragraph (b):

(b) This contract provides for the issuance of task orders on a negotiated basis as follows:

(1) The Contracting Officer will provide the contractor(s) with a statement of work or task description. The contractor(s) shall provide pricing and other information requested by the Contracting Officer (e.g., proposed staffing, plan for completing the task, etc.) within the time period specified by the Contracting Officer. Failure by any contractor to provide all the requested information on time may result in the contractor not being considered or selected for issuance of the order.

(2) The Contracting Officer may require the contractor(s) to present and/or discuss (see (3) below) the proposed task order terms orally. The Contracting Officer will provide the contractor(s) with guidance on the format, location, and duration of any presentations.

(3) The Contracting Officer may discuss the proposed task order terms with the contractor(s) to ensure mutual understanding of the contractor(s)'s technical approach and/or costs or price and/or to reach mutually acceptable final terms for the task order. If more than one contractor is being considered for the task order, any discussions will be held individually with each contractor.

(4) The task order shall be executed by the contractor and the Contracting Officer.

(End of clause)

[71 FR 2439, Jan. 13, 2006]

2452.216–79 Estimated cost (no fee).

As prescribed in 2416.307(b), insert the following clause:

ESTIMATED COST (NO FEE) (DEC 2012)

(a) It is estimated that the total reimbursable cost to the Government for full performance of this contract will be $____ [*Contracting Officer insert amount*].

(b) If this contract is incrementally funded, the following shall apply:

(1) Total funds currently available for payment and allotted to this contract are $____ [*Contracting Officer insert amount*] (see also the clause at FAR 52.232–22, ''Limitation of Funds'' herein).

(2) If and when the contract is fully funded, as specified in paragraph (a) of this clause, the clause at FAR 52.232–20, Limitation of Cost, herein, shall become applicable.

(3) The Contracting Officer may allot additional funds to the contract up to the total specified in paragraph (a) of this clause without the concurrence of the contractor.

(End of clause)

[77 FR 73533, Dec. 10, 2012]

2452.216–80 Estimated cost and fixed-fee.

As prescribed in 2416.307(b), insert the following clause:

ESTIMATED COST AND FIXED-FEE (DEC 2012)

(a) It is estimated that the total cost to the Government for full performance of this contract will be $____ [*Contracting Officer insert amount*], of which $____ [*Contracting Officer insert amount*] represents the estimated reimbursable costs, and $____ [*Contracting Officer insert amount*] represents the fixed fee.

(b) If this contract is incrementally funded, the following shall apply:

(1) Total funds currently available for payment and allotted to this contract are $____ [*Contracting Officer insert amount*], of which ____ [*Contracting Officer insert amount*] represents the limitation for reimbursable costs and $ ____ [*Contracting Officer insert amount*] represents the prorated amount of the fixed fee (see also the clause at FAR 52.232–22, ''Limitation of Funds'' herein).

(2) If and when the contract is fully funded, as specified in paragraph (a) of this clause, the clause at FAR 52.232–20, ''Limitation of Cost,'' herein, shall become applicable.

(3) The Contracting Officer may allot additional funds to the contract up to the total specified in paragraph (a) of this clause without the concurrence of the contractor.

(End of clause)

[77 FR 73533, Dec. 10, 2012]

2452.219–70 Small business subcontracting plan compliance.

As prescribed in 2419.708(d), insert the following provision:

SMALL BUSINESS SUBCONTRACTING PLAN COMPLIANCE (FEB 2006)

(a) This provision is not applicable to small business concerns.

(b) Offerors' attention is directed to the provisions in this solicitation at FAR 52.219–8, Utilization of Small Business Concerns, and the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(c) The government will consider offerors' prior compliance with subcontracting plans in determining their responsibility (see FAR 9.104–3). Therefore, offerors having previous contracts with subcontracting plans shall provide the following information: agency name; agency point of contact; contract number; total contract value; a synopsis of the work required under the contract; the role(s) of the subcontractor(s) involved; and the applicable goals and actual performance (dollars and percentages) for subcontracting with the types of small business concerns listed in the clause at FAR 52.219–9. This information shall be provided for the three most recently completed contracts with such subcontracting plans.

(End of provision)

[71 FR 2439, Jan. 13, 2006]

2452.219–71 Notification of competition limited to eligible 8(a) concerns—Alternate III to FAR 52.219–18.

As prescribed in 2419.811–3(d)(3), insert the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(a) CONCERNS—ALTERNATE III TO FAR 5219–18 (DEC 2012)

The following paragraph (c) replaces paragraph (c) of the clause at FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns:

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

[77 FR 73533, Dec. 10, 2012]

2452.219–72 Section 8(a) direct awards (Deviation).

As prescribed in 2419.811–3(f), insert the following clause:

SECTION 8(A) DIRECT AWARD (DEC 2012)

(a) This contract is issued as a direct award between the Department of Housing and Urban Development (HUD) and the 8(a) Contractor pursuant to a Partnership Agreement (Agreement) between the Small Business Administration (SBA) and HUD. The SBA retains 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 cognizant SBA district office is: [*To be completed by Contracting Officer at time of award*].

(b) SBA is the prime contractor and ____ [*insert name of 8(a) contactor*] is the subcontractor under this contract. Under the terms of the Agreement, HUD 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 HUD Contracting Officer shall give advance notice to the SBA before issuing a final notice terminating performance, either in whole or in part, under the contract. The

HUD Contracting Officer shall also coordinate with SBA prior to processing any novation agreement. HUD may assign contract administration functions to a contract administration office.

(c) ____ [*insert name of 8(a) contractor*] agrees:

(1) To notify the HUD Contracting Officer, simultaneously 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 or control.

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

(End of Clause)

[77 FR 73534, Dec. 10, 2012]

2452.219–73 Incorporation of subcontracting plan.

As prescribed in 2419.708(b), insert the following clause:

INCOPORATION OF SUBCONTRACTING PLAN (DEC 2012)

The Contractor's approved subcontracting plan, dated ____ [*Contracting Officer insert date*] is hereby incorporated by reference and made a part of this contract.

(End of clause)

[77 FR 73534, Dec. 10, 2012]

2452.219–74 Small business subcontracting goals.

As prescribed in 2419.708(b), insert the following provision:

SMALL BUSINESS SUBCONTRACTING GOALS (DEC 2012)

(a) This provision does not apply to offerors that are small businesses.

(b) The offeror's attention is directed to the FAR clause at 52.219–9, ''Small Business Subcontracting Plan,'' herein. HUD will evaluate proposed subcontracting plans using the Departmental small business subcontracting goals set forth in paragraph (c) of this clause. Offerors that are unable to propose subcontracting that meets HUD's established goals must provide the rationale for their proposed level of subcontracting.

(c) HUD's subcontracting goals are as follows:

(i) Small Business—__% [*Contracting Officer insert HUD small business subcontracting goal percentage*]

(ii) The total Small Business goal shown in paragraph (c)(i) of this clause contains the following subordinate goals [*Contracting Officer insert percentages*]:

(A) Small Disadvantaged Business—__%

(B) Women-Owned Small Business—__%

(C) Service-Disabled Veteran-Owned Small Business—__%

(D) HUBZone Small Business—__%

(End of Provision)

[77 FR 73534, Dec. 10, 2012]

2452.222–70 Accessibility of meetings, conferences, and seminars to persons with disabilities.

As prescribed in 2422.1408(c), insert the following clause in all solicitations and contracts:

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES (FEB 2006)

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract meets all applicable standards for accessibility to persons with disabilities pursuant to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and any implementing regulations of the Department. The contractor shall be responsible for ascertaining the specific accessibility needs (e.g., sign language interpreters) for each meeting, conference, or seminar in light of the known or anticipated attendees.

(End of clause)

[71 FR 2440, Jan. 13, 2006]

2452.227–70 Government information.

As prescribed in 2427.470, use the following clause:

GOVERNMENT INFORMATION (DEC 2012)

(a) *Definitions*. As used in this clause, ''Government information'' includes—

Contractor-acquired information, which means information acquired or otherwise collected by the Contractor on behalf of the Government in the context of the Contractor's duties under the contract.

Government-furnished information (GFI), which means information in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract. GFI also includes contractor-acquired information if the contractor-acquired information is a deliverable under the contract and is for continued use under the contract. Otherwise, GFI does not include information that is created by the Contractor and delivered to the

Government in accordance with the requirements of the work statement or specifications of the contract. The type, quantity, quality, and delivery requirements of such deliverable information are set forth elsewhere in the contract schedule.

(b) *Information Management and Information Security*.

(1) The Contractor shall manage, account for, and secure all Government information provided or acquired by the contractor. The Contractor shall be responsible for all Government information provided to its subcontractors. The Contractor agrees to include a requirement in each subcontract under this contract that flows down the protection from disclosure requirements.

(2) The Contractor's responsibility for Government information extends from the initial provision or acquisition and receipt of information, through stewardship, custody, and use until returned to, or otherwise disposed of, as directed by the Contracting Officer. This requirement applies to all Government information under the Contractor's accountability, stewardship, possession or control, including its subcontractors.

(c) *Use of Government information*. (1) The Contractor shall not use any information provided or acquired under this contract for any purpose other than in the performance of this contract.

(2) The Contractor shall not modify or alter the Government information, unless authorized in writing, in advance, by the Contracting Officer.

(d) *Government-furnished information*. (1) The Government shall deliver to the Contractor the information described below—

Description *Date to be Provided*
[*Contracting Officer insert*]

(2) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished information will be suitable for contract performance and will be delivered to the Contractor by the dates stated in paragraph (d)(1) of this clause.

(i) The Government does not warrant the validity or accuracy of the Government-furnished information unless otherwise noted.

(ii) In the event that information received by the Contractor is not in a condition suitable for its intended use, the Contractor shall immediately notify the Contracting Officer in writing. Upon receipt of the Contractor's notification, the Contracting Officer shall advise the Contractor on a course of action to remedy the problem.

(iii) If either the failure of the Government to provide information to the Contractor by the dates shown in this clause or the remedial action taken under this clause to correct defective information causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, the Contracting Officer shall consider an equitable adjustment to the contract. The Contractor shall provide to the Contracting Officer its written statement describing the general nature and amount of the equitable adjustment proposal within 30 days after the remedial action described in paragraph (ii) herein is completed, or within 30 days after the date upon which the Government failed to provide information, unless the Contracting Officer extends this period.

(3)(i) The Contracting Officer may, by written notice, at any time—

(A) Increase or decrease the amount of Government-furnished information under this contract;

(B) Substitute other Government-furnished information for the information previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or

(C) Withdraw authority to use the information.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

(e) *Rights in information*. Government information is the property of the U.S. Government unless otherwise specifically identified. The specific rights in any other information acquired or created by the Contractor under this contract shall be as expressed in the ''*Rights in Data*'' clause contained in this contract.

(f) *Government access to information*. The Government shall have the right to access any Government information maintained by the contractor and any subcontractors. The Contractor shall provide the Contracting Officer, and other duly authorized Government representatives, with access to all Government information, including access to the Contractor's facilities, as necessary, promptly upon written notification by the Contracting Officer. Such notification may be by electronic mail.

(g) *Contractor liability for Government information*. (1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, theft, damage, or destruction to the Government information furnished or acquired under this contract, except when the loss, theft, damage, or destruction is the result of the Contractor's failure to properly manage, account for, and safeguard the information in accordance with this clause.

(2) In the event of any loss, theft, damage, or destruction of Government information, the Contractor shall immediately take all reasonable actions necessary to protect the Government information from further loss, theft, damage, or destruction.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover

against third parties for any loss, theft, damage, or destruction of Government information.

(h) *Information alteration and disposal.* Except as otherwise provided for in this contract, the Contractor shall not alter, destroy, or otherwise dispose of any Government information unless expressly directed by the Contracting Officer to do so.

(i) *Return of Government information to the Government.* (1) The Government may require the Contractor to return Government Information to the Government at any time. Upon demand by the Contracting Officer or his/her representative, the Contractor shall return all Government information to the Government as directed by the Contracting Officer or other individual designated by the Contracting Officer.

(2) The Contractor's failure to return all information as directed, including directions regarding the time frames for delivery back to the Government and directions prescribing the form in which the data must be returned, shall be considered a breach of contract, and the Government shall have the right to physically remove the Government information from the Contractor, including removal of such information from the Contractor's physical premises and from any electronic media (e.g., Contractor's computer systems).

(3) When required to return Government information to the Government, the Contractor shall do so at no cost to the Government. The Government shall not be responsible for the cost of data format conversion and the cost of delivery, if any.

(4) The Contractor shall ensure that all Government information provided to subcontractors is returned to the Government.

(j) *Equitable adjustment.* Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. However, the Government shall not be liable for breach of contract for the following:

(1) Any delay in delivery of Government-furnished information.

(2) Delivery of Government-furnished information in a condition not suitable for its intended use.

(3) An increase, decrease, or substitution of Government-furnished information.

(4) Failure to correct or replace Government information for which the Government is responsible.

(k) *Subcontracts.* The Contractor shall ensure that all subcontracts under which Government information is provided to a subcontractor include the basic terms and conditions set forth in paragraphs (a), (b), (c), (f), and (h) of this clause in each subcontract. Subcontracts shall clearly describe the Government information provided to the subcontractor. The Contractor shall be responsible for all Government information provided to subcontractors.

Alterate I. When the contracting officer determines that the failure to return Government information as provided for in paragraph (i) of this clause shall result in a monetary damage to the Government, the contracting officer shall include the following additional paragraph (i)(5) of this clause. The contracting officer shall consult the requiring activity to determine an amount or percentage that accurately reflects the damages to the Government.

(5) In the event of Contractor delay in returning the Government Information to the Government, for each calendar day late, the Contracting Officer has the discretion to deduct _____ [*Contracting Officer insert dollar amount or percentage*] from the total value of the contract, and/or withhold payment from the Contractor.

(End of clause)

[77 FR 73534, Dec. 10, 2012]

2452.232–70 Payment schedule and invoice submission (Fixed-price).

As prescribed in 2432.908(c)(1), insert the following clause in all fixed-price solicitations and contracts:

PAYMENT SCHEDULE AND INVOICE SUBMISSION (FIXED–PRICE) (DEC 2012)

(a) *Payment Schedule.* Payment of the contract price (see Section B of the contract) will be made upon completion and acceptance of all work unless a partial payment schedule is included below [*Contracting Officer insert schedule information*]:

Partial payment number	Applicable contract deliverable	Delivery date	Payment amount
1.	.....	.....	
2.	.....	.....	
3.	.....	.....	

[*Continue as necessary*]

(b) *Submission of Invoices*. (1) The Contractor shall submit invoices as follows: original to the payment office and one copy each to the Contracting Officer and a copy to the Government Technical Representative (GTR) identified in the contract. To constitute a proper invoice, the invoice must include all items required by the FAR clause at 52.232–25, ''Prompt Payment.''

(2) To assist the government in making timely payments, the contractor is also requested to include on each invoice the appropriation number shown on the contract award document (*e.g.*, block 14 of the Standard Form (SF) 26, block 21 of the SF–33, or block 25 of the SF–1449). The contractor is also requested to clearly indicate on the mailing envelope that an invoice is enclosed.

(c) *Contractor Remittance Information*. The contractor shall provide the payment office with all information required by other payment clauses or other supplemental information (e.g., contracts for commercial services) contained in this contract.

(d) *Final Invoice Payment*. The final invoice shall not be paid prior to certification by the Contracting Officer that all work has been completed and accepted.

(End of clause)

[77 FR 73535, Dec. 10, 2012]

2452.232–71 Voucher submission.

As prescribed in 2432.908(c)(3), insert the following clause in all cost-reimbursement, time-and-materials, and labor-hour solicitations and contracts:

VOUCHER SUBMISSION (DEC 2012)

(a) *Voucher Submission*.

(1) The contractor shall submit, ____ [*Contracting Officer insert billing period, e.g., monthly*], an original and two copies of each voucher. In addition to the items required by the clause at FAR 52.232–25, *Prompt Payment*, the voucher shall show the elements of cost for the billing period and the cumulative costs to date. The Contractor shall submit all vouchers, except for the final voucher, as follows: original to the payment office and one copy each to the Contracting Officer and the Government Technical Representative (GTR) identified in the contract. The contractor shall submit all copies of the final voucher to the Contracting Officer.

(2) To assist the government in making timely payments, the contractor is requested to include on each voucher the applicable appropriation number(s) shown on the award or subsequent modification document (e.g., block 14 of the Standard Form (SF) 26, or block 21 of the SF–33). The contractor is also requested to clearly indicate on the mailing envelope that a payment voucher is enclosed.

(b) *Contractor Remittance Information*. (1) The Contractor shall provide the payment office with all information required by other payment clauses contained in this contract.

(2) For time-and-materials and labor-hour contracts, the Contractor shall aggregate vouchered costs by the individual task for which the costs were incurred and clearly identify the task or job.

(c) *Final Payment*. The final payment shall not be made until the Contracting Officer has certified that the contractor has complied with all terms of the contract.

(End of clause)

[77 FR 73536, Dec. 10, 2012]

2452.232–72 Limitation of Government's obligation.

As prescribed in 2432.705–70, use the following clause:

LIMITATION OF GOVERNMENT'S OBLIGATION (DEC 2012)

(a) Funds are not available for full funding of all contract line items under this contract. The incrementally funded line items and their anticipated funding schedule are as follows:

Contract line item number	Total price	Amount of current funding	Anticipated date(s) of future funding

The contracting officer will revise this table as funds are allotted to the contract.

(b) For the incrementally funded line item(s) in paragraph (a) of this clause, the

Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract for these contract line items. The Contractor is not authorized to continue work on the incrementally funded line item(s) beyond that point. The Government will in no event be obligated to reimburse the Contractor in excess of the amount allotted to the contract for the incrementally funded line item(s) regardless of anything to the contrary in the clause entitled ''*Termination for Convenience of the Government*.'' As used in this clause, the total amount payable by the Government in the event of termination for convenience of applicable line item(s) includes costs, profit, and estimated termination settlement costs for those line item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (a) of this clause, the Contractor will notify the Contracting Officer in writing at least ____ [*90 days unless the Contracting Officer inserts a different number*] days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable line item(s). This notification will state: the estimated date when that point will be reached; and an estimate of the amount of additional funding, if any, needed to continue performance of the applicable line items up to the next scheduled date for allotment of funds identified in paragraph (a) of this clause (or to another mutually agreed-upon date). The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the line item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (a) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed-upon date, the Contracting Officer will terminate any line item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled ''*Termination for Convenience of the Government*.''

(d) When additional funds are allotted for continued performance of the incrementally funded line item(s), the parties will agree to the period of contract performance covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed-upon date(s), and the contract will be modified accordingly.

(e) If the Contractor incurs additional costs or is delayed in the performance of the work under this contract solely by reason of the failure of the Government to allot additional funds in amounts sufficient for timely performance of the incrementally funded line item(s), and then additional funds are allotted, an equitable adjustment will be made in the line item price(s) or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder shall be considered a dispute subject to the ''*Disputes*'' clause in this contract.

(f) The Government may allot additional funds for the performance of the incrementally-funded line item(s) at any time prior to termination.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled ''*Default*.'' The provisions of this clause are limited to the work and allotment of funds for the incrementally funded line item(s) and will no longer apply once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled ''*Termination for Convenience of the Government*.''

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(End of clause)

[77 FR 73536, Dec. 10, 2012]

2452.232–73 Constructive acceptance period.

As prescribed in 2432.908, insert the following clause:

CONSTRUCTIVE ACCEPTANCE PERIOD (DEC 2012)

As authorized by FAR 32.908(c)(1), the constructive acceptance period in paragraph (a)(5)(i) of the clause at FAR 52.232–25, ''Prompt Payment,'' under this contract is ____ [*Contracting Officer insert number*] calendar days.

(End of clause)

[77 FR 73537, Dec. 10, 2012]

2452.233–70 Review of contracting officer protest decisions.

As prescribed in 2433.106, insert the following provision:

REVIEW OF CONTRACTING OFFICER PROTEST DECISIONS (FEB 2006)

(a) In accordance with FAR 33.103 and HUDAR 2433.103, a protester may request an appeal of the Contracting Officer's decision concerning a protest initially made by the protester to the Contracting Officer. The protestor must submit a written request for an appeal to [*insert name of HCA and address*] not later than 10 days after the protestor's receipt of the Contracting Officer's decision (see FAR 33.101 for the definition of ''days'').

(b) The HCA shall make an independent review of the Contracting Officer's decision and provide the protester with the HCA's decision on the appeal.

(End of provision)

[71 FR 2440, Jan. 13, 2006]

2452.237–70 Key personnel.

As prescribed in 2437.110(e)(1), insert the following clause in solicitations and contracts when it is necessary for contract performance to identify the contractor's key personnel:

KEY PERSONNEL (FEB 2006)

(a) *Definition.* ''Personnel'' means employees of the contractor, or any subcontractor(s), affiliates, joint venture partners, or team members, and consultants engaged by any of those entities.

(b) The personnel specified below are considered to be essential to the work being performed under this contract. Prior to diverting any of the specified individuals to other projects, the contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the contractor without the written consent of the Contracting Officer. Key personnel shall perform as follows: [*List Key Personnel and/or positions, and tasks, percentage of effort, number of hours, etc., for which they are responsible, as applicable.*]

(End of clause)

[71 FR 2440, Jan. 13, 2006, as amended at 77 FR 73537, Dec. 10, 2012]

2452.237–73 Conduct of Work and Technical Guidance.

As prescribed in 2437.110(e)(2), insert the following clause in all contracts for services:

CONDUCT OF WORK AND TECHNICAL GUIDANCE (DEC 2012)

(a) The Contracting Officer will provide the contractor with the name and contact information of the Government Technical Representative (GTR) assigned to this contract. The GTR will serve as the contractor's liaison with the Contracting Officer with regard to the conduct of work. The Contracting Officer will notify the contractor in writing of any change to the current GTR's status or the designation of a successor GTR.

(b) The GTR will provide guidance to the contractor on the technical performance of the contract. Such guidance shall not be of a nature which:

(1) Causes the contractor to perform work outside the statement of work or specifications of the contract;

(2) Constitutes a change as defined in FAR 52.243–1;

(3) Causes an increase or decrease in the cost of the contract;

(4) Alters the period of performance or delivery dates; or

(5) Changes any of the other express terms or conditions of the contract.

(c) The GTR will issue technical guidance in writing or, if issued orally, he/she will confirm such direction in writing within five calendar days after oral issuance. The GTR may issue such guidance via telephone, facsimile (fax), or electronic mail.

(d) Certain of the GTR's duties and responsibilities may be delegated to one or more Government Technical Monitors (GTMs) (see HUDAR subpart 2402.1). The Contracting Officer will notify the contractor in writing of the appointment of any GTMs.

(e) Other specific limitations [*to be inserted by Contracting Officer*]:

(f) The contractor shall promptly notify the Contracting Officer whenever the contractor believes that guidance provided by any government personnel, whether or not specifically provided pursuant to this clause, is of a nature described in paragraph (b) above.

(End of clause)

[71 FR 2441, Jan. 13, 2006, as amended at 77 FR 73537, Dec. 10, 2012]

2452.237–75 Access to HUD Facilities.

As prescribed in 2437.110(e)(3), insert the following clause in solicitations and contracts:

ACCESS TO HUD FACILITIES (DEC 2012)

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

Access means physical entry into and, to the extent authorized, mobility within a Government facility.

Contractor employee means an employee of the prime contractor or of any subcontractor, affiliate, partner, joint venture, or team members with which the contractor is associated. It also includes consultants engaged by any of those entities.

Facility and *Government facility* mean buildings, including areas within buildings that are owned, leased, shared, occupied, or otherwise controlled by the Federal Government.

NACI means National Agency Check with Inquiries, the minimum background investigation prescribed by the U.S. Office of Personnel Management.

PIV Card means the Personal Identity Verification (PIV) Card, the Federal Government-issued identification credential (identification badge).

(b) *General*. The performance of this contract requires contractor employees to have access to HUD facilities. All such employees who do not already possess a current PIV Card acceptable to HUD shall be required to provide personal background information, undergo a background investigation (NACI or other OPM-required or approved investigation), including an FBI National Criminal History Fingerprint Check, and obtain a PIV Card prior to being permitted access to any such facility in performance of this contract. HUD may accept a PIV Card issued by another Federal Government agency but shall not be required to do so. No contractor employee will be permitted access to a HUD facility without a proper PIV Card.

(c) *Background information*. (1) For each contractor employee subject to the requirements of this clause and not in possession of a current PIV Card acceptable to HUD, the contractor shall submit the following properly completed forms: Standard Form (SF) 85, ''Questionnaire for Non-sensitive Positions,'' FD 258 (Fingerprint Chart), and a partial Optional Form (OF) 306 (Items 1, 2, 6, 8–13, 16, and 17). The SF–85 and OF–306 are available from the OPM Web site, *http://www.opm.gov*. The GTR will provide all other forms that are not obtainable via the Internet.

(2) The contractor shall deliver the forms and information required in paragraph (c)(1) of this clause to the GTR.

(3) The information provided in accordance with paragraph (c)(1) of this clause will be used to perform a background investigation to determine the suitability of the contractor employees to have access to Government facilities. After completion of the investigation, the GTR will notify the contractor in writing when any contractor employee is determined to be unsuitable for access to a Government facility. The contractor shall immediately remove such employee(s) from work on this contract that requires physical presence in a Government facility.

(4) Affected contractor employees who have had a federal background investigation without a subsequent break in federal employment or federal contract service exceeding 2 years may be exempt from the investigation requirements of this clause subject to verification of the previous investigation. For each such employee, the contractor shall submit the following information in lieu of the forms and information listed in paragraph (c)(1) of this clause: Employee's full name, Social Security Number, and place and date of birth.

(d) *PIV Cards*. (1) HUD will issue a PIV Card to each contractor employee who is to be given access to HUD facilities and who does not already possess a PIV Card acceptable to HUD (see paragraph (b) of this clause). HUD will not issue the PIV Card until the contractor employee has successfully cleared the FBI National Criminal History Fingerprint Check and HUD has initiated the background investigation for the contractor employee. Initiation is defined to mean that all background information required in paragraph (c)(1) of this clause has been delivered to HUD. The employee may not be given access prior to those two events. HUD may issue a PIV Card and grant access pending the completion of the background investigation. HUD will revoke the PIV Card and the employee's access if the background investigation process (including adjudication of investigation results) for the employee has not been completed within 6 months after the issuance of the PIV Card.

(2) PIV Cards shall identify individuals as contractor employees. Contractor employees shall display their PIV Cards on their persons at all times while working in a HUD facility, and shall present cards for inspection upon request by HUD officials or HUD security personnel.

(3) The contractor shall be responsible for all PIV Cards issued to the contractor's employees and shall immediately notify the GTR if any PIV Card(s) cannot be accounted for. The contractor shall promptly return PIV Cards to HUD as required by the FAR clause at 52.204–9. The contractor shall notify the GTR immediately whenever any contractor employee no longer has a need for his/her HUD-issued PIV Card (e.g., employee terminates employment with the contractor, employee's duties no longer require access to HUD facilities). The GTR will instruct the contractor as to how to return the PIV Card. Upon expiration of this contract, the GTR will instruct the contractor as to how to return all HUD-issued PIV Cards not previously returned. Unless otherwise directed by the Contracting Officer, the contractor shall not return PIV Cards to any person other than the GTR.

(e) *Control of access*. HUD shall have, and exercise, complete control over granting, denying, withholding, and terminating access

of contractor employees to HUD facilities. The GTR will notify the contractor immediately when HUD has determined that an employee is unsuitable or unfit to be permitted access to a HUD facility. The contractor shall immediately notify such employee that he/she no longer has access to any HUD facility, remove the employee from any such facility that he/she may be in, and provide a suitable replacement in accordance with the requirements of this clause.

(f) *Access to HUD information systems.* If this contract requires contractor employees to have access to HUD information system(s), application(s), or information contained in such systems, the contractor shall comply with all requirements of HUDAR clause 2452.239–70, *Access to HUD Systems,* including providing for each affected employee any additional background investigation forms prescribed in that clause.

(g) *Subcontracts.* The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (b) of this section are applicable to performance of the subcontract.

(End of clause)

[77 FR 73537, Dec. 10, 2012]

2452.237–77 Temporary closure of HUD facilities.

As prescribed in 2437.110(e)(4), insert the following clause:

TEMPORARY CLOSURE OF HUD FACILITIES (DEC 2012)

OBSERVANCE OF LEGAL HOLIDAYS AND CLOSURE OF HUD FACILITIES (FEB 2006)

New Year's Day
Martin Luther King's Birthday
Washington's Birthday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans Day
Thanksgiving Day
Christmas Day

Any other day designated by Federal law, Executive Order, or Presidential Proclamation.

(2) When any holiday specified in (a)(1) falls on a Saturday, the preceding Friday shall be observed. When any such holiday falls on a Sunday, the following Monday shall be observed. Observances of such days by Government personnel shall not be cause for additional period of performance or entitlement to compensation except as set forth in the contract. If the contractor's personnel work on a holiday, no form of holiday or other premium compensation will be reimbursed either as a direct or indirect cost, unless authorized pursuant to an overtime clause elsewhere in this contract.

(b)(1) HUD may close a HUD facility for all or a portion of a business day as a result of—

(A) Granting administrative leave to nonessential HUD employees (e.g., unanticipated holiday);

(B) Inclement weather;

(C) Failure of Congress to appropriate operational funds;

(D) Or any other reason.

(2) In such cases, contractor personnel not classified as essential, i.e., not performing critical round-the-clock services or tasks, who are not already on duty at the facility shall not report to the facility. Such contractor personnel already present shall be dismissed and shall leave the facility.

(3) The contractor agrees to continue to provide sufficient personnel to perform round-the-clock requirements of critical tasks already in operation or scheduled for performance during the period in which HUD employees are dismissed, and shall be guided by any specific instructions of the Contracting Officer or his/her duly authorized representative.

(c) When contractor personnel services are not required or provided due to closure of a HUD facility as described in this clause, the contractor shall be compensated as follows—

(1) For fixed-price contracts, deductions in the contractor's price will be computed as follows—

(A) The deduction rate in dollars per day will be equal to the per month contract price divided by 21 days per month.

(B) The deduction rate in dollars per day will be multiplied by the number of days services are not required or provided.

If services are provided for portions of days, appropriate adjustment will be made by the Contracting Officer to ensure that the contractor is compensated for services provided.

(2) For cost-reimbursement, time-and-materials and labor-hour type contracts, HUD shall not reimburse as direct costs, the costs of salaries or wages of contractor personnel for the period during which such personnel are dismissed from, or do not have access to, the facility.

(End of clause)

[64 FR 46100, Aug. 23, 1999, as amended at 71 FR 2441, Jan. 13, 2006; 77 FR 73538, Dec. 10, 2012]

2452.239–70 Access to HUD systems.

As prescribed in 2439.107(a), insert the following clause:

ACCESS TO HUD SYSTEMS (DEC 2012)

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

Access means the ability to obtain, view, read, modify, delete, and/or otherwise make use of information resources.

Application means the use of information resources (information and information technology) to satisfy a specific set of user requirements (see OMB Circular A–130).

Contractor employee means an employee of the prime contractor or of any subcontractor, affiliate, partner, joint venture, or team members with which the contractor is associated. It also includes consultants engaged by any of those entities.

Mission-critical system means an information technology or telecommunications system used or operated by HUD or by a HUD contractor, or organization on behalf of HUD, that processes any information, the loss, misuse, disclosure, or unauthorized access to, or modification of which would have a debilitating impact on the mission of the agency.

NACI means a National Agency Check with Inquiries, the minimum background investigation prescribed by OPM.

PIV Card means the Personal Identity Verification (PIV) Card, the Federal Government-issued identification credential (i.e., identification badge).

Sensitive information means any information of which the loss, misuse, or unauthorized access to, or modification of, could adversely affect the national interest, the conduct of federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which 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.

System means an interconnected set of information resources under the same direct management control, which shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people (see OMB Circular A–130). System includes any system owned by HUD or owned and operated on HUD's behalf by another party.

(b) *General*. (1) The performance of this contract requires contractor employees to have access to a HUD system or systems. All such employees who do not already possess a current PIV Card acceptable to HUD shall be required to provide personal background information, undergo a background investigation (NACI or other OPM-required or approved investigation), including an FBI National Criminal History Fingerprint Check, and obtain a PIV Card prior to being permitted access to any such system in performance of this contract. HUD may accept a PIV Card issued by another Federal Government agency but shall not be required to do so. No contractor employee will be permitted access to any HUD system without a PIV Card.

(2) All contractor employees who require access to mission-critical systems or sensitive information contained within a HUD system or application(s) are required to have a more extensive background investigation. The investigation shall be commensurate with the risk and security controls involved in managing, using, or operating the system or applications(s).

(c) *Citizenship-related requirements*. Each affected contractor employee as described in paragraph (b) of this clause shall be:

(1) A United States (U.S.) citizen; or,

(2) A national of the United States (see 8 U.S.C. 1408); or,

(3) An alien lawfully admitted into, and lawfully permitted to be employed in the United States, provided that for any such individual, the Government is able to obtain sufficient background information to complete the investigation as required by this clause. Failure on the part of the contractor to provide sufficient information to perform a required investigation or the inability of the Government to verify information provided for affected contractor employees will result in denial of their access.

(d) *Background investigation process*.

(1) The Government Technical Representative (GTR) shall notify the contractor of those contractor employee positions requiring background investigations.

(i) For each contractor employee requiring access to HUD information systems, the contractor shall submit the following properly completed forms: Standard Form (SF) 85, ''Questionnaire for Non-Sensitive Positions,'' FD 258 (Fingerprint Chart), and a partial Optional Form (OF) 306 (Items 1, 2, 6, 8–13, 16, and 17).

(ii) For each contractor employee requiring access to mission-critical systems and/or sensitive information contained within a HUD system and/or application(s), the contractor shall submit the following properly completed forms: SF–85P, ''Questionnaire for Public Trust Positions;'' FD 258; and a Fair Credit Reporting Act form (authorization for the credit-check portion of the investigation). Contractor employees shall not complete the Medical Release behind the SF–85P.

(iii) The SF–85, 85P, and OF–306 are available from OPM's Web site, *http://www.opm.gov*. The GTR will provide all other forms that are not obtainable via the Internet.

(2) The contractor shall deliver the forms and information required in paragraph (d)(1) of this clause to the GTR.

(3) Affected contractor employees who have had a federal background investigation without a subsequent break in federal employment or federal contract service exceeding 2 years may be exempt from the investigation requirements of this clause subject

to verification of the previous investigation. For each such employee, the contractor shall submit the following information in lieu of the forms and information listed in paragraph (d)(1) of this clause: Employee's full name, Social Security number, and place and date of birth.

(4) The investigation process shall consist of a range of personal background inquiries and contacts (written and personal) and verification of the information provided on the investigative forms described in paragraph (d)(1) of this clause.

(5) Upon completion of the investigation process, the GTR will notify the contractor if any contractor employee is determined to be unsuitable to have access to the system(s), application(s), or information. Such an employee may not be given access to those resources. If any such employee has already been given access pending the results of the background investigation, the contractor shall ensure that the employee's access is revoked immediately upon receipt of the GTR's notification.

(6) Failure of the GTR to notify the contractor (see subparagraph (d)(1)) of any employee who should be subject to the requirements of this clause and is known, or should reasonably be known, by the contractor to be subject to the requirements of this clause, shall not excuse the contractor from making such employee(s) known to the GTR. Any such employee who is identified and is working under the contract, without having had the appropriate background investigation or furnished the required forms for the investigation, shall cease to perform such work immediately and shall not be given access to the system(s)/application(s) described in paragraph (b) of this clause until the contractor has provided the investigative forms required in paragraph (d)(1) of this clause for the employee to the GTR

(7) The contractor shall notify the GTR in writing whenever a contractor employee for whom a background investigation package was required and submitted to HUD, or for whom a background investigation was completed, terminates employment with the contractor or otherwise is no longer performing work under this contract that requires access to the system(s), application(s), or information. The contractor shall provide a copy of the written notice to the Contracting Officer.

(e) *PIV Cards.* (1) HUD will issue a PIV Card to each contractor employee who is to be given access to HUD systems and does not already possess a PIV Card acceptable to HUD (see paragraph (b) of this clause). HUD will not issue the PIV Card until the contractor employee has successfully cleared an FBI National Criminal History Fingerprint Check, and HUD has initiated the background investigation for the contractor employee. Initiation is defined to mean that all background information required in paragraph (d)(1) of this clause has been delivered to HUD. The employee may not be given access prior to those two events. HUD may issue a PIV Card and grant access pending the completion of the background investigation. HUD will revoke the PIV Card and the employee's access if the background investigation process (including adjudication of investigation results) for the employee has not been completed within 6 months after the issuance of the PIV Card.

(2) PIV Cards shall identify individuals as contractor employees. Contractor employees shall display their PIV Cards on their persons at all times while working in a HUD facility, and shall present cards for inspection upon request by HUD officials or HUD security personnel.

(3) The contractor shall be responsible for all PIV Cards issued to the contractor's employees and shall immediately notify the GTR if any PIV Card(s) cannot be accounted for. The contractor shall promptly return PIV Cards to HUD as required by the FAR clause at 52.204–9. The contractor shall notify the GTR immediately whenever any contractor employee no longer has a need for his/her HUD-issued PIV Card (e.g., the employee terminates employment with the contractor, the employee's duties no longer require access to HUD systems). The GTR will instruct the contractor as to how to return the PIV Card. Upon expiration of this contract, the GTR will instruct the contractor as to how to return all HUD-issued PIV Cards not previously returned. Unless otherwise directed by the Contracting Officer, the contractor shall not return PIV Cards to any person other than the GTR.

(f) *Control of access.* HUD shall have and exercise full and complete control over granting, denying, withholding, and terminating access of contractor employees to HUD systems. The GTR will notify the contractor immediately when HUD has determined that an employee is unsuitable or unfit to be permitted access to a HUD system. The contractor shall immediately notify such employee that he/she no longer has access to any HUD system, physically retrieve the employee's PIV Card from the employee, and provide a suitable replacement employee in accordance with the requirements of this clause.

(g) *Incident response notification.* An incident is defined as an event, either accidental or deliberate, that results in unauthorized access, loss, disclosure, modification, or destruction of information technology systems, applications, or data. The contractor shall immediately notify the GTR and the Contracting Officer of any known or suspected incident, or any unauthorized disclosure of the information contained in the system(s) to which the contractor has access.

(h) *Nondisclosure of information.* (1) Neither the contractor nor any of its employees shall divulge or release data or information developed or obtained during performance of this contract, except to authorized government personnel with an established need to know, or upon written approval of the Contracting Officer. Information contained in all source documents and other media provided by HUD is the sole property of HUD.

(2) The contractor shall require that all employees who may have access to the system(s)/applications(s) identified in paragraph (b) of this clause sign a pledge of nondisclosure of information. The employees shall sign these pledges before they are permitted to perform work under this contract. The contractor shall maintain the signed pledges for a period of 3 years after final payment under this contract. The contractor shall provide a copy of these pledges to the GTR.

(i) *Security procedures.* (1) The Contractor shall comply with applicable federal and HUD statutes, regulations, policies, and procedures governing the security of the system(s) to which the contractor's employees have access including, but not limited to:

(i) The Federal Information Security Management Act (FISMA) of 2002;

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

(iii) HUD Handbook 2400.25, *Information Technology Security Policy;*

(iv) HUD Handbook 732.3, *Personnel Security/Suitability;*

(v) Federal Information Processing Standards 201 (FIPS 201), Sections 2.1 and 2.2;

(vi) Homeland Security Presidential Directive 12 (HSPD–12); and

(vii) OMB Memorandum M–05–24, *Implementing Guidance for HSPD–12.*

The HUD Handbooks are available online at: *http://www.hud.gov/offices/adm/hudclips/* or from the GTR.

(2) The contractor shall develop and maintain a compliance matrix that lists each requirement set forth in paragraphs, (b), (c), (d), (e), (f), (g), (h), (i)(1), and (m) of this clause with specific actions taken, and/or procedures implemented, to satisfy each requirement. The contractor shall identify an accountable person for each requirement, the date upon which actions/procedures were initiated/completed, and certify that information contained in this compliance matrix is correct. The contractor shall ensure that information in this compliance matrix is complete, accurate, and up-to-date at all times for the duration of this contract. Upon request, the contractor shall provide copies of the current matrix to HUD.

(3) The Contractor shall ensure that its employees, in performance of the contract, receive annual training (or once if the contract is for less than one year) in HUD information technology security policies, procedures, computer ethics, and best practices in accordance with HUD Handbook 2400.25.

(j) *Access to contractor's systems.* The Contractor shall afford HUD, including the Office of Inspector General, access to the Contractor's facilities, installations, operations, documentation (including the compliance matrix required under paragraph (i)(2) of this clause), databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out, but not limited to, any information security program activities, investigation, and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality of HUD data and systems, or to the function of information systems operated on behalf of HUD, and to preserve evidence of computer crime.

(k) *Contractor compliance with this clause.* Failure on the part of the contractor to comply with the terms of this clause may result in termination of this contract for default.

(l) *Physical access to Federal Government facilities.* The contractor and any subcontractor(s) shall also comply with the requirements of HUDAR clause 2452.237–75 when the contractor's or subcontractor's employees will perform any work under this contract on site in a HUD or other Federal Government facility.

(m) *Subcontracts.* The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (b) of this section are applicable to performance of the subcontract.

(End of clause)

[77 FR 73538, Dec. 10, 2012]

2452.239–71 Information Technology Virus Security.

As prescribed in 2439.107(b), insert the following clause:

INFORMATION TECHNOLOGY VIRUS SECURITY (FEB 2006)

(a) The contractor hereby agrees to make every reasonable effort to deliver information technology products to HUD free of known computer viruses. The contractor shall be responsible for examining all such products prior to their delivery to HUD using software tools and processes capable of detecting all known viruses.

(b) The contractor shall include the following statement on deliveries of hardware, software, and data products, including diskettes, made under this contract:

[product description, part/catalog number, other identifier, and serial number, if any]

''This product has been scanned for known viruses using [name of virus-screening product, including version number, if any] and is certified to be free of known viruses at the time of delivery.''

(c) The Contracting Officer may assess monetary damages against the contractor sufficient to compensate HUD for actual or estimated costs resulting from computer virus damage or malicious destruction of computer information arising from the contractor's failure to take adequate precautions to preclude delivery of virus-containing products in the delivery of hardware, software, or data on diskettes under this contract.

(d) This clause shall not limit the rights of the government under any other clause of this contract.

(End of clause)

[65 FR 3577, Jan. 21, 2000, as amended at 71 FR 2441, Jan. 13, 2006]

2452.242–70 Indirect costs.

As prescribed in 2442.705–70, insert the following clause in cost-reimbursement type solicitations and contracts when it is determined that the Contractor will be compensated for negotiated or provisional indirect cost rates pending establishment of final indirect cost rates.

INDIRECT COSTS (APR 1984)

(a) Pursuant to the provisions of the clause of this contract entitled, ''Allowable Cost and Payment'' the rates listed below are established. If the column entitled, ''Ceiling Rate'' has rates listed, the ceiling applies for those rates only. If there are no ceiling rates listed, ceilings do not apply to this contract and the provisions of paragraph (b) of this clause are not applicable.

Period	Category	Provisional rate	Ceiling rate	Base
Effective date until amended:				

(b) For the term of this contract, the final indirect rates shall not exceed the ceiling rates listed above, if any. However, in the event the indirect rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the ceiling rates agreed to herein, then the rates established by such cognizant audits shall apply (downward adjustment only). The Government shall not be obligated to pay any additional amounts on indirect rates above the ceiling rates set forth for the applicable period

(End of clause)

2452.242–71 Contract management system.

As prescribed in 2442.1107, insert the following clause:

CONTRACT MANAGEMENT SYSTEM (FEB 2006)

(a) The contractor shall use contract management baseline planning and progress reporting as described herein.

(b) The contract management system shall consist of two parts:

(1) *Baseline plan*. The baseline plan shall consist of:

(i) A narrative portion that:

(A) Identifies each task and significant activity required for completing the contract work, critical path activities, task dependencies, task milestones, and related deliverables;

(B) Describes the contract schedule, including the period of time needed to accomplish each task and activity (see paragraph (ii)(B) of this section below);

(C) Describes staff (e.g., hours per individual), financial, and other resources allocated to each task and significant activity; and,

(D) Provides the rationale for contract work organization and resource allocation.

(ii) A graphic portion showing:

(A) Cumulative planned or budgeted costs of work scheduled for each reporting period over the life of the contract (i.e., the budgeted baseline); and

(B) The planned start and completion dates of all planned and budgeted tasks and activities.

(2) *Progress reports*. Progress reports shall consist of:

(i) A narrative portion that:

(A) Provides a brief, concise summary of technical progress made and the costs incurred for each task during the reporting period; and

(B) Identifies problems, or potential problems, that will affect the contract's cost or schedule, the causes of the problems, and the contractor's proposed corrective actions.

(ii) A graphic portion showing:

(A) The original time-phased, budgeted baseline.

(B) The schedule status and degree of completion of the tasks, activities, and deliverables shown in the baseline plan for the reporting period, including actual start and completion dates for all tasks and activities in the baseline plan; and

(C) The costs incurred during the reporting period, the current total amount of costs incurred through the end date of the reporting period for budgeted work, and the projected

costs required to complete the work under the contract.

(3) *Reporting frequency*. The reports described in (b)(2) shall be submitted [*insert period, e.g., monthly, quarterly, or schedule based on when payments will be made under the contract*].

(c) The formats, forms, and/or software to be used for the contract management system under this contract shall be [*Contracting Officer insert appropriate language* ''as prescribed in the schedule;'' ''a format, forms and/or software designated by the GTR;'' or, ''the contractor's own format, forms and/or software, subject to the approval of the GTR.'']. (d) When this clause applies to individual task orders under the contract, the word ''contract'' shall mean ''task order.''

(End of clause)

Alternate I (FEB 2006). As prescribed in 2442.1107, replace paragraph (b) with the following:

(b) The contract management system shall consist of two parts:

(1) *Baseline plan*. The baseline plan shall consist of:

(i) A narrative portion that:

(A) Identifies each task and significant activity required for completing the contract work, critical path activities, task dependencies, task milestones, and related deliverables;

(B) Describes the contract work schedule, including the period of time needed to accomplish each task and activity (see paragraph (ii) of this section below);

(C) Describes key personnel allocated to each task and significant activity; and,

(D) Provides the rationale for contract work organization.

(ii) A graphic portion showing the planned start and completion dates of all planned tasks and activities.

(2) *Progress reports*. Progress reports shall consist of:

(i) A narrative portion that:

(A) Provides a brief, concise summary of technical progress made for each task during the reporting period; and

(B) Identifies problems, or potential problems, that will affect the contract's cost or schedule, their causes, and the contractor's proposed corrective actions.

(ii) A graphic portion showing the schedule status and degree of completion of the tasks, activities, and deliverables shown in the baseline plan for the reporting period, including actual start and completion dates for all tasks and activities in the baseline plan.

(3) *Reporting frequency*. The reports described in (b)(2) shall be submitted [*insert period, e.g., monthly, quarterly, or schedule*].

(End of clause)

[71 FR 2441, Jan. 13, 2006]

2452.246–70 Inspection and acceptance.

As prescribed in 2446.502–70, insert the following clause in all solicitations and contracts:

INSPECTION AND ACCEPTANCE (FEB 2006)

Inspection and acceptance of all work required under this contract shall be performed by the Government Technical Representative (GTR) or other individual as designated by the Contracting Officer or the GTR.

(End of clause)

[71 FR 2441, Jan. 13, 2006]

2452.251–70 Contractor employee travel.

As prescribed in 2451.7001, insert the following clause in all cost-reimbursement solicitations and contracts involving travel:

CONTRACTOR EMPLOYEE TRAVEL (OCT 1999)

(a) To the maximum extent practical, the Contractor shall make use of travel discounts which are available to Federal employees while traveling in the conduct of official Government business. Such discounts may include, but are not limited to, lodging and rental car rates.

(b) The Contractor shall be responsible for obtaining and/or providing to his/her employees written evidence of their status with regard to their performance of Government contract work needed to obtain such discounts.

(End of clause)

[64 FR 46101, Aug. 23, 1999]

PART 2453—FORMS

Sec.
2453.000 Scope of part.

Subpart 2453.2—Prescription of Forms

2453.215 Contracting by negotiation.
2453.217 Special contracting methods.
2453.217–70 Form HUD-730, Award/Modification of Interagency Agreement.
2453.227 Patents, data, and copyrights.
2453.227–70 Form HUD-770, Report of Inventions and Subcontracts.
2453.242 Contract administration.

2453.246 Quality Assurance.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46543, Nov. 17, 1988, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 2453 appear at 64 FR 46101, Aug. 23, 1999.

2453.000 Scope of part.

This part prescribes Agency forms for use in acquisition and contains requirements and information generally applicable to the forms.

Subpart 2453.2—Prescription of Forms

2453.215 Contracting by negotiation.

2453.217 Special contracting methods.

2453.217–70 Form HUD-730, Award/Modification of Interagency Agreement.

As prescribed in 2417.504(b), form HUD-730 shall be used by Contracting Officers when placing or modifying an order for supplies or services from another Government agency.

2453.227 Patents, data, and copyrights.

2453.227–70 Form HUD-770, Report of Inventions and Subcontracts.

As prescribed in 2427.305–2, form HUD-770 shall be completed by the Contractor, and submitted to the Contracting Officer, if requested, upon completion of the contract.

2453.242 Contract administration.

2453.246 Quality Assurance.

PARTS 2454–2499 [RESERVED]

CHAPTER 25—NATIONAL SCIENCE FOUNDATION

SUBCHAPTER A—GENERAL

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SUBCHAPTER A—GENERAL

PART 2500 [RESERVED]

PART 2501—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 2501.1—Purpose, Authority, Issuance

Sec.
2501.101 Purpose.
2501.102 Authority.
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2501.104 Issuance.
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Subpart 2501.4—Deviations From the FAR

2501.403 Individual deviations.
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2501.601 General.
2501.602 Contracting officers.
2501.602–1 Authority.

AUTHORITY: 42 U.S.C. 1870(a).

SOURCE: 49 FR 46744, Nov. 28, 1984, unless otherwise noted.

Subpart 2501.1—Purpose, Authority, Issuance

2501.101 Purpose.

These regulations implement and supplement the Federal Acquisition Regulations (FAR).

2501.102 Authority.

The NSF Acquisition Regulations are issued under the authority of section 11(a) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

2501.103 Applicability.

Except where a deviation is specifically authorized in accordance with subpart 2501.4 or otherwise authorized by law, the FAR and the NSFAR govern all NSF acquisitions.

2501.104 Issuance.

2501.104–1 Publication and code arrangement.

(a) The NSFAR is published in the daily issues of the FEDERAL REGISTER and, in cumulative form, in the Code of Federal Regulations.

(b) The NSFAR is issued as chapter 25 of title 48, CFR.

2501.104–2 Arrangement of regulations.

The NSFAR uses the same numbering system and arrangement used in the FAR. Where the NSFAR implements the FAR it is numbered and captioned to correspond to the FAR. Where there is no corresponding material in the FAR, Parts 70 and up are used by the NSFAR. Where the subject matter in the FAR requires no implementation the NSFAR contains no corresponding part.

Subpart 2501.4—Deviations From the FAR

2501.403 Individual deviations.

Individual deviations, affecting only one contracting action may be authorized by the NSF Procurement Executive.

2501.404 Class deviations.

Class deviations may be authorized by the NSF Procurement Executive subject to the limitations set forth in FAR subpart 1.4.

Subpart 2501.6—Contracting Authority and Responsibilities

2501.601 General.

Authority and responsibility to contract for authorized supplies and services is vested in the Director, NSF, within the limits expressly provided by the National Science Foundation Act of 1950 (42 U.S.C. 1861 *et seq.*). The NSF Procurement Executive is delegated overall responsibility by the Director for the Foundation's contracting activities.

2501.602 Contracting officers.

2501.602–1 Authority.

NSF Contracting Officers have authority to enter into, administer, or terminate contracts and make related determinations and findings to the extent of the authority delegated to them in writing by the NSF Procurement Executive.

SUBCHAPTER B—ACQUISITION PLANNING

PART 2509—CONTRACTOR QUALIFICATIONS

Subpart 2509.4—Debarment, Suspension, and Ineligibility

Sec.
2509.400 Scope of subpart.
2509.403 Definitions.
2509.405 Effect of listing.
2509.405–1 Continuation of current contracts.
2509.405–2 Restrictions on subcontracting.
2509.406 Debarment.
2509.406–1 General.
2509.406–3 Procedures.
2509.407 Suspension.
2509.407–1 General.
2509.407–3 Procedures.
2509.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.
2509.410 Appeals.

AUTHORITY: Sec. 11(a), National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

SOURCE: 57 FR 34881, Aug. 7, 1992, unless otherwise noted.

Subpart 2509.4—Debarment, Suspension, and Ineligibility

2509.400 Scope of subpart.

This subpart supplements subpart 9.4 of the Federal Acquisition Regulation by prescribing NSF policies and procedures and assigning responsibility for making debarment and suspension decisions. Nothing in this subpart is intended to alter the effect of subpart 9.4.

2509.403 Definitions.

The NSF Deputy Director is the ''debarring official'' and ''suspending official'' for the Foundation. All duties assigned to the NSF Deputy Director by this regulation or by subpart 9.4 of the Federal Acquisition Regulation may be delegated by him or her to any officer or employee of the Foundation.

2509.405 Effect of listing.

2509.405–1 Continuation of current contracts.

(a) The NSF Deputy Director will decide whether to continue NSF contracts or subcontracts in existence at the time a contractor is debarred, suspended, or proposed for debarment.

(b) The NSF Deputy Director will decide whether to renew or otherwise extend the duration of NSF contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment. He or she will prepare a written statement of the compelling reasons for renewal and extension.

2509.405–2 Restrictions on subcontracting.

The NSF Deputy Director may authorize a contracting officer to consent to a subcontract with a contractor debarred, suspended, or proposed for debarment. He or she will prepare a written statement of the compelling reasons for such approval.

2509.406 Debarment.

2509.406–1 General.

(c) The NSF Deputy Director will decide whether to enter into a contract with a contractor that is debarred or proposed for debarment. He or she will prepare a written statement of the compelling reasons justifying continued business dealings between the Foundation and the contractor.

2509.406–3 Procedures.

(a) Any NSF employee who becomes aware of circumstances that may serve as the basis for debarment of a contractor will promptly report them to the NSF Office of Inspector General (OIG) and the debarring official. OIG will investigate the circumstances and, if it determines appropriate, prepare a written referral of the matter to the debarring official.

(b) Upon receipt of a referral from the NSF Office of Inspector General, the debarring official will determine, in consultation as appropriate with OIG, the NSF Office of the General Counsel, the NSF Procurement Executive, and program officials, what additional steps are necessary and appropriate to make a decision in accordance with the requirements of 48 CFR 9.406–3.

2509.407 Suspension.

2509.407–1 General.

(d) The NSF Deputy Director will decide whether to enter into a contract with a suspended contractor. He or she will prepare a written statement of the compelling reasons justifying continued business dealings between the Foundation and the contractor.

2509.407–3 Procedures.

(a) Any NSF employee who becomes aware of circumstances that may serve as the basis for suspension of a contractor will promptly report them to the NSF Office of Inspector General (OIG) and the suspending official. OIG will investigate the circumstances and, if it determines appropriate, prepare a written referral of the matter to the suspending official.

(b) Upon receipt of a referral from the NSF Office of Inspector General, the suspending official will determine, in consultation as appropriate with OIG, the NSF Office of the General Counsel, the NSF Procurement Executive, and program officials, what additional steps are necessary and appropriate to make a decision in accordance with the requirements of 48 CFR 9.407–3.

2509.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

(a)(2) NSF contracting officers will notify the Office of Inspector General and the Deputy Director whenever information submitted by offerors in compliance with the Certifications Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters provisions in solicitations indicates the existence of an indictment, charge, conviction, or civil judgment.

2509.410 Appeals.

(a) A debarred or suspended contractor may appeal to the Director in writing within 30 days after receiving notice of the debarring or suspending official's decision in accordance with 48 CFR 9.406–3(e) or 9.407–3(d)(4). The debarring or suspending official's decision becomes a final administrative action if not appealed within the 30 day period.

(b) The Director may appoint an uninvolved NSF officer or employee to review an appeal and make recommendations.

(c) The Director will inform the appellant of a final decision within 30 days after receiving the appeal. That decision will be the final administrative action of the Foundation.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2515—CONTRACTING BY NEGOTIATION

AUTHORITY: 42 U.S.C. 1870(c).

SOURCE: 49 FR 46744, Nov. 28, 1984, unless otherwise noted.

Subpart 2515.2—Negotiation Authorities

2515.215–70 NSF negotiation authorities.

(a) *Authorities*. Citation: 42 U.S.C. 1870(c).

(b) *Application*. When an NSF contract is for scientific activities which are determined by the NSF contracting officer to be ''necessary to carry out the purposes of the NSF Act,'' then 41 U.S.C. 252(c)(15) is applicable and the contract may be entered into through negotiation rather than formal advertising. The Foundation's contracting officer may, in lieu of reliance on 42 U.S.C. 1870(c) and 41 U.S.C. 252(c)(15), utilize other applicable negotiating authorities at his or her discretion. 42 U.S.C. 1870(c) and 41 U.S.C. 252(c)(15) may also be used to authorize negotiation if the Foundation is carrying out, ''at the request of the Secretary of State or Secretary of Defense, specific scientific activities in connection with matters relating to international cooperation or national security.'' Contracts or their modifications entered into under this authority may be done so without legal consideration and without performance or other bonds.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2527—PATENTS, DATA, AND COPYRIGHTS

Subpart 2527.70—Disposition of Rights in Inventions

Sec.
2527.7001 General.
2527.7002 NSF patent policy.

Subpart 2527.71—Data Rights [Reserved]

AUTHORITY: 35 U.S.C. 200–212; 42 U.S.C. 1870(e) and 1871); and the Presidential Memorandum entitled ''Government Patent Policy'', issued February 18, 1983.

Subpart 2527.70—Disposition of Rights in Inventions

2527.7001 General.

National Science Foundation policies, procedures, and clauses governing allocation of rights to inventions made under NSF contracts, grants, and cooperative agreements are codified as part 650 of title 45 of the Code of Federal Regulations.

[57 FR 34882, Aug. 7, 1992, as amended at 61 FR 51022, Sept. 30, 1996]

2527.7002 NSF patent policy.

As authorized by the National Science Board at its 230th meeting, October 15–16, 1981, the Director of the National Science Foundation has adopted the following statement of NSF patent policy.

(a) In accordance with by the Bayh-Dole Act and the Presidential Memorandum entitled ''Government Patent Policy'' issued February 18, 1983, the Foundation will use the Patent Rights clause prescribed by the Department of Commerce in all its funding agreements for the performance of experimental, developmental, or research work, including awards made to foreign entities, unless the Foundation determines that some other provision would better serve the purposes of that Act or the interests of the United States and the general public.

(b) In funding agreements covered by a treaty or agreement that provides that an international organization or foreign government, research institute, or inventor will own or share patent rights, the Foundation will acquire such patent rights as are necessary to comply with the applicable treaty or agreement.

(c) If an awardee elects not to retain rights to an invention, the Foundation will allow the inventor to retain the principal patent rights unless the awardee, or the inventor's employer if other than the awardee, shows that it would be harmed by that action.

(d) The Foundation will normally allow any patent rights not wanted by the awardee or inventor to be dedicated to the public through publication in scientific journals or as a statutory invention registration. However, if another Federal agency is known to be interested in the relevant technology, the Foundation may give it an opportunity to review and patent the invention so long as that does not inhibit the dissemination of the research results to the scientific community.

[57 FR 34882, Aug. 7, 1992]

Subpart 2527.71—Data Rights [Reserved]

PART 2532—CONTRACT FINANCING

Subpart 2532.4—Advance Payments

Sec.
2532.401 Statutory authority.
2532.403 Applicability.

AUTHORITY: 42 U.S.C. 1870(d).

SOURCE: 49 FR 46745, Nov. 28, 1984, unless otherwise noted.

Subpart 2532.4—Advance Payments

2532.401 Statutory authority.

The NSF Act (42 U.S.C. 1870(d)) provides that advance, progress, or other payments which relate to scientific activities or scientific information may

be made without regard to the provisions of section 3324 of title 31 of the United States Code.

[49 FR 46745, Nov. 28, 1984, as amended at 61 FR 51022, Sept. 30, 1996]

2532.403 Applicability.

Advance payments may be made in any amount not exceeding the contract price, provided (a) the amount of the advance payment is based upon an analysis of the financing required by the contractor for the contract and does not exceed reasonable financial requirements between payments, and (b) such advance payment is appropriate in order to contract for the required work.

PARTS 2533–2599 [RESERVED]

CHAPTER 28—DEPARTMENT OF JUSTICE

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SUBCHAPTER A—GENERAL

PART 2800 [RESERVED]

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATIONS SYSTEM

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2801.7001–702 Selection, appointment, and limitation of authority.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16118, Apr. 2, 1998, unless otherwise noted.

Subpart 2801.1—Purpose, Authority, Issuance

2801.101 Purpose.

(a) The Justice Acquisition Regulations (JAR) in this chapter are established to provide procurement regulations that supplement the Federal Acquisition Regulation (FAR), 48 CFR chapter 1. As such, the regulations contained in the JAR will include coverage of only those areas where agency implementation is required by the FAR, or where Department of Justice (DOJ) policies and procedures exist that supplement FAR coverage and directly affect the contractual relationship between the Department and potential or existing contractors. The JAR will not repeat FAR coverage.

(b) The FAR contains many references to agency procedures. If the JAR does not include supplemental guidance under the corresponding part or subpart, it is because the FAR language is considered to be sufficient. In those instances where the JAR states ''in accordance with bureau procedures,'' it does not mean that the bureau must have a procedure. It is intended that the bureau procedures are to be followed if they exist, however, it does not mean that the bureau must have a formal written procedure. Where both the JAR and bureau procedures do not address a FAR subject, the FAR guidance is to be followed.

(c) The JAR is not a complete system of regulations and must be used in conjunction with the FAR.

2801.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and the Office of Management and Budget's (OMB) implementing regulations at 5 CFR part 1320, require that reporting and record keeping requirements affecting 10 or more members of the public be cleared by that office. The OMB control number for the collection of information under 48 CFR chapter 28 is 1103–0018.

Subpart 2801.2—Administration

2801.270–1 Revisions.

In addition to changes published in the FEDERAL REGISTER, the JAR will be amended by issuance of Justice Acquisition Circulars (JACs) containing loose-leaf replacement pages which revise parts, subparts, sections, subsections, paragraphs or subparagraphs. A vertical bar (edit bar) at the beginning or end of a line indicates that a change has been made within that line.

Subpart 2801.3—Agency Acquisition Regulations

2801.304 Agency control and compliance procedures.

Pursuant to FAR 1.304, the Procurement Executive (PE) is responsible for ensuring that bureau acquisition regulations and directives do not restrain the flexibilities found in the FAR. For this reason, bureau acquisition regulations shall be forwarded to the PE upon issuance. The PE reserves the right to revoke the regulations and directives in this chapter if they are determined to be restrictive.

Subpart 2801.4—Deviations From the FAR and JAR

2801.403 Individual deviations.

Individual deviations from the FAR or the JAR shall be approved by the head of the contracting activity (HCA). A copy of the deviation shall be included in the contract file. Copies of all deviations will be provided to the PE.

2801.404 Class deviations.

Requests for class deviations from the FAR or the JAR shall be submitted to the PE. The PE will consult with the chairperson of the Civilian Agency Acquisition Council, as appropriate, and send his/her recommendations to the Assistant Attorney General for Administration (AAG/A). The AAG/A will grant or deny requests for such deviations. For the purposes of this chapter, requests for deviations involving basic ordering agreements, master type contracts, or situations where multiple awards are made from one solicitation, are considered to involve more than one contract and therefore considered to be class deviation requests.

2801.470 Requests for class deviations.

Requests for approval of class deviations from the FAR or the JAR shall be forwarded to the PE. Such requests will be signed by the Bureau Procurement Chief (BPC). Requests for class deviations shall be submitted as far in advance as the exigencies of the situation permit and shall contain sufficient written justification to evaluate the request.

Subpart 2801.6—Career Development, Contracting Authority, and Responsibilities

2801.601 General.

(a) In accordance with Attorney General Order 1687–93, the authority vested in the Attorney General with respect to contractual actions, for goods and services, is delegated to the following officials:

(1) AAG/A (for the offices, boards, and divisions (OBDs);

(2) Director, Federal Bureau of Investigation;

(3) Director, Federal Bureau of Prisons;

(4) Commissioner, Federal Prison Industries;

(5) Commissioner, Immigration and Naturalization Service;

(6) Administrator, Drug Enforcement Administration;

(7) Assistant Attorney General, Office of Justice Programs;

(8) Director, U.S. Marshals Service;

(9) Inspector General, Office of the Inspector General.

(b) The acquisition authority delegated to the officials in 2801.601(a) may be redelegated to subordinate officials as necessary for the efficient and proper administration of the Department's acquisition operations. Such redelegated authority shall expressly state whether it carries the power of redelegation of authority.

(c) The redelegation of contracting authority directly to specific persons without regard for intermediate organizational levels only establishes authority to represent the Government in its commercial business dealings. It is

not intended to affect the organizational relationship between the contracting officers and higher administrative and supervisory levels in the performance of their duties.

2801.602 Contracting officers.

2801.602–3 Ratification of unauthorized commitments.

The HCA may delegate the authority to ratify unauthorized commitments to the chief of the contracting office, except for those actions effected by his or her office. Dollar thresholds for delegations made under this section will be determined by the HCA. Copies of all ratifications are to be provided to the PE.

2801.603 Selection, appointment and termination of appointment.

2801.603–1 Department of Justice Acquisition Career Management Program.

(a) Each Bureau Procurement Chief shall develop and manage an acquisition career management program for contracting personnel in his or her component, consistent and uniform with this section and the Department of Justice Acquisition Procurement Career Management Program.

(b) The program shall cover all contracting personnel in the following categories:

(1) General Schedule (GS–1102) Contracting Series;

(2) Contracting officers, regardless of General Schedule Series, with contracting authority above the simplified acquisition threshold;

(3) Purchasing Series (GS–1105), other individuals performing purchasing duties and individuals with contracting authority between the micro purchase and simplified acquisition thresholds.

(4) All Contracting Officer Representatives/Contracting Officer Technical Representatives, or equivalent positions.

(c) The program shall include:

(1) *Management information system.* Standardized information on the acquisition workforce will be collected and maintained. To the maximum extent practicable, such data requirements shall conform to the standards established by the Office of Personnel Management for the Central Personnel Data File and shall be compatible with the Department of Justice acquisition workforce management information system.

(2) *Individual assessments and development plans for personnel in the GS–1102 contracting series.* (i) An individual assessment by a supervisor of each covered employee's state of competence to perform the full range of potential duties of his or her job; and

(ii) An individual development plan to schedule classroom, on-the-job training, or other training to develop the employee's skill level to an appropriate level in each area of competence necessary to perform his or her job.

(iii) Individual assessments and development plans should be designed to fit the needs of the component, but they should be built upon the units of competence and instruction prepared by the Federal Acquisition Institute whenever feasible. Individual development plans should attempt to bring the employee to an appropriate level of skill in all necessary competencies in the field of procurement. In general, a proficiency skill level of 3, as defined in Attachment 1 to Office of Federal Procurement Policy (OFPP) Policy Letter 92–3, shall be obtained for any contracting duty that is actually required to be performed on the job. Individual assessments and development plans should be reviewed annually and revised as appropriate, until the employee reaches the full competency level of his or her job.

(iv) Employees who perform only purchasing duties, regardless of occupational series, shall be required to obtain the requisite level of skill only in competencies involving simplified acquisitions. If the employee's duties are expanded to include contracting duties, then skill in procurement competencies must be assessed and developed.

(v) Individual assessments of covered employee skills shall be completed within 90 days of the employee's entry on duty.

(3) *Mandatory training.* Training shall be provided for the identified categories of contracting personnel to meet the minimum standards identified in OFPP Policy Letter 97–01.

(4) *Skills currency*. Contract Specialists (GS–1102) and contracting officers with authority to obligate funds above the micro-purchase threshold that have satisfied the mandatory training requirements, shall be provided the equivalent of at least 40 hours of continuing procurement and acquisition related education and training every two years for the purpose of maintaining the currency of acquisition knowledge and skills.

(5) *Program funding*. Bureau Procurement Chiefs are responsible for assessing the funding needs to provide for the education and training of their acquisition workforce and requesting such funding in the annual budget process.

2801.603–3 Appointment.

Contracting officers whose authority will be limited to micro-purchases shall be appointed in writing and include any limitations to that authority.

Subpart 2801.70—Contracting Officer's Technical Representative

2801.7001–701 General.

Contracting officers may appoint individuals selected by program offices to act as authorized representatives in the monitoring and administration of a contract. Such officials shall be designated as Contracting Officers' Technical Representatives (COTR's).

2801.7001–702 Selection, appointment, and limitation of authority.

(a) *COTR standards program*. This subpart sets forth policies and procedures for establishing standards for COTR's in DOJ. The program sets forth minimum standards for individuals to be eligible for an appointment as a COTR.

(b) *Applicability*. The eligibility requirements of this subpart apply to all individuals who are designated by the contracting officer as COTR's.

(c) *Eligibility standards*. To be determined eligible for an appointment as a DOJ COTR, the following standards must be met:

(1) The candidate must attend and successfully complete a minimum of a 16-hour basic COTR course; and

(2) The candidate must attend a minimum of 1 hour training specifically in procurement ethics, either through courses offered periodically by the Department, the bureaus, or a Government or commercial vendor.

(d) *Limitations*. Each COTR appointment made by the contracting officer shall clearly state that the representative is not an authorized contracting officer and does not have the authority under any circumstances to:

(1) Award, agree to award, or execute any contract, contract modification, notice of intent, or other form of binding agreement;

(2) Obligate, in any manner, the payment of money by the Government;

(3) Make a final decision on any contract matter which is subject to the clause at FAR 52.233–1, Disputes; or

(4) Terminate, suspend, or otherwise interfere with the contractor's right to proceed, or direct any changes in the contractor's performance that are inconsistent with or materially change the contract specifications.

(e) *Termination*. Termination of the COTR's appointment shall be made in writing by the contracting officer and shall give the effective date of the termination. The contracting officer shall promptly modify the contract once a COTR termination notice has been issued. A termination notice is not required when the COTR's appointment terminates upon expiration of the contract.

(f) *Waivers*. No individual may serve as a COTR on any contract without the requisite training and signed COTR certificate for the file. In the rare event that there is an urgent requirement for a specific individual to serve as a COTR and the individual has not successfully completed the required training, the BPC may waive the training requirements and authorize the individual to perform the COTR duties, for a period of time not to exceed 120 days. The waiver will be granted in accordance with bureau procedures.

(g) *COTR clause*. The clause at 2852.201–70 is required in all contracts where a COTR is designated.

PART 2802—DEFINITIONS OF WORDS AND TERMS

Subpart 2802.1—Definitions

Sec.
2802.101 Definitions.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2802.1—Definitions

2802.101 Definitions.

Throughout this chapter, the following words and terms are used as defined in this subpart unless the context in which they appear clearly requires a different meaning, or a different definition is prescribed for a particular part or portion of a part.

(a) *Bureaus* means contracting activities. (See *contracting activity* in this subpart.)

(b) *Bureau procurement chief* means that supervisory official who is directly responsible for supervising, managing and directing all contracting offices of the bureau.

(c) *Chief of the contracting office* means that supervisory official who is directly responsible for supervising, managing and directing a contracting office.

(d) *Contracting activity* means a component within the Department which has been delegated procurement authority to manage contracting functions associated with its mission. See 2801.601(a).

(e) *DOJ* means the Department of Justice.

(f) *HCA* means head of the contracting activity i.e. those officials identified in 2801.601(a) having responsibility for supervising, managing, and directing the operations of the contracting activities.

(g) *JAR* means the Department of Justice Acquisition Regulations in 48 CFR chapter 28.

(h) *JMD* means the Justice Management Division.

(i) *OBDs* means the offices, boards, and divisions within the Justice Department.

(j) *PE* means the Procurement Executive for the Department of Justice.

[63 FR 16121, Apr. 2, 1998]

PART 2803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2803.1—Safeguards

Sec.
2803.101–3 Agency regulations.
2803.104 Procurement integrity.
2803.104–10 Violations or possible violations.
2803.104–70 Ethics program training requirements.

Subpart 2803.2—Contractor Gratuities to Government Personnel

2803.203 Reporting suspected violations of the gratuities clause.
2803.204 Treatment of violations.

Subpart 2803.3—Reports of Suspected Antitrust Violations

2803.301 General.

Subpart 2803.9—Whistleblower Protections for Contractor Employees

2803.905 Procedures for investigating complaints.
2803.906 Remedies.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16121, Apr. 2, 1998, unless otherwise noted.

Subpart 2803.1—Safeguards

2803.101–3 Agency regulations.

The DOJ regulations governing Standards of Conduct are contained in 5 CFR part 2635.

2803.104 Procurement integrity.

2803.104–10 Violations or possible violations.

(a) Upon receipt of information of a violation or possible violation of section 27 of the Act, the contracting officer must do the following:

(1) Refer the matter to the Office of the Inspector General or other office designated in Attorney General Order 1931–94; and

(2) Make the determination required by FAR 3.104–10(a) and follow the procedures prescribed therein.

(b) The individual referenced in FAR 3.104–10(a)(1) is the Bureau Procurement Chief.

(c) The HCA must follow the criteria contained in FAR 3.104–10(g) when designating authority under this subpart.

(d) The HCA, or designee, shall refer information regarding actual or possible violations of section 27 of the Act to the Office of the Inspector General or other office designated in Attorney General Order 1931–94 for guidance before taking action.

(e) If the HCA, or designee, receiving the information of a violation, or possible violation, determines that award is justified by urgent and compelling circumstances, or is otherwise in the interest of the Government, then the contracting officer may be authorized to award the contract after notification to the Office of the Inspector General or other office designated in Attorney General Order 1931–94.

(f) The contracting officer will be advised, or directed by the HCA, or designee, as to the action to be taken. The types of actions that would normally be taken when a violation has occurred that affected the outcome of a procurement are listed in FAR 3.104–11(d).

(g) The PE shall be advised of all instances where violations have been determined to have occurred. Information must describe the violation as well as actions taken.

2803.104–70 Ethics program training requirements.

It is the responsibility of the bureaus to provide training for ''procurement officials'' concerning the requirements of FAR 3.104. The bureau procurement training efforts should be coordinated with the Department's Ethics Official, who is responsible for developing agency ethics training plans, to include briefings on ethics and standards of conduct for employees who are contracting officers and procurement officials. The Ethics Official should be contacted directly to schedule training.

Subpart 2803.2—Contractor Gratuities to Government Personnel

2803.203 Reporting suspected violations of the gratuities clause.

DOJ personnel shall report suspected violations of the gratuities clause to the contracting officer or chief of the contracting office in writing. The report shall clearly state the circumstances surrounding the incident, including the nature of the gratuity, the behavior or action the gratuity was to influence, and the persons involved. The contracting officer, after review, shall forward the report along with his or her recommendations regarding the treatment of the violation in accordance with FAR 3.204(c) to the HCA or designee.

2803.204 Treatment of violations.

(a) The HCA or designee shall determine whether adverse action against the contractor in accordance with FAR 3.204(c) should be taken. In reaching a decision, the HCA or designee shall consult with the contracting activity's legal advisor and the Office of the Inspector General or other office designated in Attorney General Order 1931–94.

(b) Prior to taking any action against the contractor the HCA or designee shall allow the contractor the opportunity to present opposing arguments in accordance with FAR 3.204(b).

(c) The PE shall be advised of all instances where violations have been determined to have occurred. Information must describe the violation as well as actions taken.

Subpart 2803.3—Reports of Suspected Antitrust Violations

2803.301 General.

Reports of suspected antitrust violations shall be referred to the AG and PE in accordance with bureau procedures.

Subpart 2803.9—Whistleblower Protections for Contractor Employees

2803.905 Procedures for investigating complaints.

(a) The Inspector General shall conduct an investigation and provide a written report of findings to the HCA.

(b) The HCA will ensure that the Inspector General provides the report of finding as specified in FAR 3.905(c).

(c) The complainant and contractor shall be afforded the opportunity to submit a written response to the report of findings within 30 days to the HCA. Extensions of time to file a written response may be granted by the HCA.

(d) The HCA may at any time request additional investigative work be done on the complaint.

2803.906 Remedies.

(a) Upon determination that a contractor has subjected one of its employees to a reprisal for providing information, the HCA may take one or more actions specified in FAR 3.906(a).

(b) Whenever a contractor fails to comply with an order, the HCA shall request an action be filed for enforcement of such order in the United States district court.

PART 2804—ADMINISTRATIVE MATTERS

Subpart 2804.4—Safeguarding Classified Information Within Industry

Sec.
2804.402 General.
2804.403 Responsibilities of contracting officers.
2804.470 Contractor Personnel Security Program.
2804.470–1 Policy.
2804.470–2 Responsibilities.

Subpart 2804.5—Electronic Commerce in Contracting

2804.506 Exemptions.

Subpart 2804.6—Contract Reporting

2804.602 Federal Procurement Data System.

Subpart 2804.8—Government Contract Files

2804.805 Storage, handling, and disposal of contract files.

Subpart 2804.9—Information Reporting to the Internal Revenue Service

2804.901 Definitions.
2804.902 Contract information.
2804.970 Special reporting exceptions.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16122, Apr. 2, 1998, unless otherwise noted.

Subpart 2804.4—Safeguarding Classified Information Within Industry

2804.402 General.

Classified acquisitions or contracts which require access to classified material, as defined in FAR 4.401, for their performance shall be subject to the policies, procedures, and instructions contained in departmental regulations and shall be processed in a manner consistent with those regulations.

2804.403 Responsibilities of contracting officers.

For proposed solicitations and contracts which may require access to classified material or where guard services are assigned to safeguard departmental activities in possession of classified information, the contracting officer shall consult with the COTR and the Director, Security and Emergency Planning Staff, JMD, to determine the appropriate security measures to safeguard such material and information.

2804.470 Contractor Personnel Security Program.

2804.470–1 Policy.

It is the policy of the Department of Justice that all acquisitions which allow unescorted contractor access to Government facilities or sensitive information contain, as appropriate, requirements for appropriate personnel security screening by the contractor. To the maximum extent practicable, contractors shall be made responsible for the performance of personnel security screening. The personnel security screening may vary from one acquisition to another, depending upon the type, context, duration and location of the work to be performed. Classified contracts are exempted from the requirements of this section because they are governed by the requirements of Executive Order 12829 (January 6, 1993).

2804.470–2 Responsibilities.

(a) The primary acquiring component, together with its Security Program Manager, is responsible for providing the contracting officer with the

appropriate contractor personnel security screening requirements (including waiver requirements, if appropriate) to be included in the statement of work.

(b) The contracting officer is responsible for including in the contract file for all such acquisitions, a certification made by the responsible Security Program Manager that the personnel security requirements of the contract are adequate to ensure the security of Departmental operations, information and personnel.

(c) The Security Program Manager for the acquiring component is responsible for monitoring and ensuring that the contractor personnel security requirements of the contract are accomplished.

(d) For purposes of this section, the term Contracting Officer includes anyone empowered to place orders under Blanket Purchase Agreements (BPA) or any other existing contract vehicle and/or through the use of the government-wide commercial purchase card.

Subpart 2804.5—Electronic Commerce in Contracting

2804.506 Exemptions.

Pursuant to FAR 4.506(b), all determinations that FACNET processing is not cost-effective or practicable for the contracting officer, or portions thereof, shall be initiated by the HCA and submitted to the PE for processing to the Attorney General for signature.

Subpart 2804.6—Contract Reporting

2804.602 Federal Procurement Data System.

(a) Federal Procurement Data System (FPDS) reports shall be submitted to the Procurement Policy and Review Group (PPRG) within 20 days of the close of each of the first three quarters of the fiscal year and within 30 days after the close of the fourth quarter. Specific preparation procedures are contained in the FPDS Reporting Manual and the Product and Service Code Manual.

(b) Bureaus shall submit periodic reports of their subcontract activities, together with copies of their Standard Forms 295 and 294 to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU) as required by that office.

(c) BPCs shall provide to the PE, the name, office, mailing address, and telephone number of the individual who will provide day-to-day operational contact within the bureau for the implementation of the FPDS. Changes and updates shall be forwarded to PPRG within 10 days after they occur. It is the responsibility of the bureau contacts to ensure that all actions are reported and submitted to PPRG in a timely manner and that all statistics and reports are accurate, current, and complete. BPCs shall be responsible for validating the data.

Subpart 2804.8—Government Contract Files

2804.805 Storage, handling, and disposal of contract files.

In accordance with FAR 4.805, each bureau shall prescribe procedures for the handling, storing, and disposing of contract files.

Subpart 2804.9—Information Reporting to the Internal Revenue Service

2804.901 Definitions.

Classified contract, as used in this subpart, means a contract such that the fact of its existence of its subject matter has been designated and clearly marked or clearly represented, pursuant to the provisions of Federal law or an Executive Order, as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.

Confidential contract, as used in this subpart, means a contract, the reporting of which to the Internal Revenue Service (IRS) as required under 26 U.S.C. 6050M, would interfere with the effective conduct of a confidential law enforcement activity, such as contracts for sites for undercover operations or contracts with informants, or foreign counterintelligence activity.

2804.902 Contract information.

(a) Pursuant to FAR 4.902, the HCA, or delegate, shall certify to the PE, in the format specified in this section, under penalty of perjury, that such official has examined the information submitted by that bureau as its FPDS data, that the data has been prepared pursuant to the requirement of 26 U.S.C. 6050M, and that, to the best of such official's knowledge and belief it is compiled from bureau records maintained in the normal course of business for the purpose of making a true, correct and complete return as required by 26 U.S.C. 6050M.

(b) The following certification will be signed and dated by the HCA, or delegate, and submitted with each bureau quarterly FPDS report (as specified by 2804.602).

CERTIFICATION

I, _____(Name), _____ (Title) under the penalties of perjury have examined the information to be submitted by _____ (Bureau) to the Procurement Executive, for making information returns on behalf of the Department of Justice to the Internal Revenue Service, and certify that this information has been prepared pursuant to the requirements of 26 U.S.C. 6050M and that it is to the best of my knowledge and belief, a compilation of bureau records maintained in the normal course of business for the purpose of providing true, correct and complete returns as required by 26 U.S.C. 6050M.

Signature _____

Date _____

(c) The PE will certify the consolidated FPDS data for the Department, transmit the data to the Federal Procurement Data Center (FPDC) and authorize the FPDC to make returns to the IRS on behalf of the agency.

2804.970 Special reporting exceptions.

(a) The Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647) amended 26 U.S.C. 6050M to allow exceptions to the reporting requirements for certain classified or confidential contracts.

(b) The head of the agency has determined that the filing of information returns, as required by 26 U.S.C. 6050M, on confidential contracts, which involve law enforcement or foreign counterintelligence activities, would interfere with the effective conduct of those confidential law enforcement or foreign counterintelligence activities, and that the special reporting exceptions added to 26 U.S.C. 6050M by The Technical and Miscellaneous Revenue Act of 1988 to these types of contracts.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2805—PUBLICIZING CONTRACT ACTIONS

Subpart 2805.2—Synopses of Proposed Contract Actions

Sec.
2805.201–70 Departmental notification.

Subpart 2805.3—Synopses of Contract Awards

2805.302–70 Department notification.

Subpart 2805.5—Paid Advertisements

2805.502 Authority.
2805.503–70 Procedures.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16123, Apr. 2, 1998, unless otherwise noted.

Subpart 2805–2—Synopses of Proposed Contract Actions

2805.201–70 Departmental notification.

(a) A copy of each synopsis of a proposed contract action sent to the Department of Commerce, shall be furnished to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Justice Management Division (JMD).

(b) Contracting officers shall document, in the contract file, that a copy of the notice has been forwarded to the OSDBU. A ''cc'' to the OSDBU on the file copy of the Commerce Business Daily (CBD) notice shall be considered adequate documentation.

Subpart 2805.3—Synopses of Contract Awards

2805.302–70 Departmental notification.

(a) The contracting officer shall forward a copy of the synopsis of contract award, as prepared under FAR 5.302, to the Director, OSDBU, JMD.

(b) Contracting officers shall document in the contract file that a copy of the notice has been forwarded to the OSDBU. A ''cc'' to the OSDBU on the file copy of the CBD notice shall be considered adequate documentation.

Subpart 2805.5—Paid Advertisements

This subpart provides policies and procedures for the procurement of paid advertising as covered by 5 U.S.C. 302, 44 U.S.C. 3701, 3702, and 3703, and Title 7, Chapter 5–25.2, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies.

2805.502 Authority.

(a) Authorization for paid advertising is required for newspapers only. Pursuant to 28 CFR 0.14, the authority to approve publication of paid advertisements in newspapers has been delegated to the officials listed in 2801.601(a). This authority may be redelegated as appropriate.

(b) Authority to purchase paid advertising must be granted in writing by an official delegated such authority. No advertisement, notice, or proposal will be published prior to receipt of advance written authority for such publication. No voucher for any such advertisement or publication will be paid unless there is presented, with the voucher, a copy of such written authority. Authority shall not be granted retroactively.

2805.503–70 Procedures.

(a) Agency officials exercising the authority delegated by 2805.502(a) and (b) shall do so in accordance with the procedures set forth in FAR 5.503 and those in this subsection.

(b) Requests for procurement of advertising shall be accompanied by written authority to advertise or publish which sets forth justification and includes the names of newspapers or journals concerned, frequency and dates of proposed advertisements, estimated cost, and other pertinent information.

(c) Procedures for payment of vouchers are contained in Title 7, Chapter 5–25.2, General Accounting Office Policy

and Procedures Manual for Guidance of Federal Agencies.

PART 2806—COMPETITION REQUIREMENTS

Subpart 2806.3—Other Than Full and Open Competition

Sec.
2806.302 Circumstances permitting other than full and open competition.
2806.302–7 Public interest.
2806.302–70 Determination and findings.
2806.303 Justifications.
2806.303–1 Requirements.
2806.303–2 Content.
2806.304 Approval of the justification.

Subpart 2806.5—Competition Advocates

2806.501 Requirement.
2806.502 Duties and responsibilities.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16124, Apr. 2, 1998, unless otherwise noted.

Subpart 2806.3—Other Than Full and Open Competition

2806.302 Circumstances permitting other than full and open competition.

2806.302–7 Public interest.

2806.302–70 Determination and findings.

(a) *Procedure*. The determination and findings (D&F) required by FAR 6.302.7(c)(1) shall be prepared in the format provided in paragraph (b) of this subsection. The original D&F and documentation supporting the use of this exception to the requirement for full and open competition shall be submitted to PPRG, JMD, for concurrence and coordination to the Attorney General for signature.

(b) *Format*. The following format shall be used for the D&F:

DEPARTMENT OF JUSTICE

WASHINGTON, DC 20530

DETERMINATION AND FINDINGS

Authority To Use Other Than Full and Open Competition:

Upon the basis of the following findings and determination, which I hereby make pursuant to the authority of 41 U.S.C. 253(c)(7), as implemented by FAR 6.302–7, it is in the public interest to provide for other than full and open competition in the contract action described below.

Findings:

1. The (1) proposes to enter into a contract for the acquisition of (2).

2. Use of the authority cited above is necessary and in the public interest for the following reasons: (3)

Determination

For the reasons described above, it is necessary and in the public interest to use other than full and open competition in the proposed acquisition.

Signature _____

Date _____

Notes:

(1) Name of contracting activity.

(2) Brief description of supplies or services.

(3) Explain the need for use of the authority.

2806.303 Justifications.

2806.303–1 Requirements.

Pursuant to FAR 6.303–1(d), a copy of the justification shall be forwarded through the Department's Competition Advocate to the Department's point of contact with the Office of the United States Trade Representative.

2806.303–2 Content.

In addition to the information required by FAR 6.303–2, justifications requiring the approval of the PE shall contain the following documents:

(a) A written Acquisition Plan as required by FAR 7.102 and part 2807 of this chapter. If a plan was not prepared, explain why planning was not feasible or accomplished.

(b) A copy of the CBD announcement or proposed announcement in accordance with the requirements of FAR 5.203.

(c) As part of the description of the supplies or services required in FAR 6.303–2, the justification shall include the statement of need as submitted by the requiring activity and any subsequent changes or revisions to the specifications.

(d) Any additional documentation that may be unique to the proposed procurement and is relevant to the justification.

2806.304 Approval of the justification.

(a) All justifications for contract actions over the contracting officer's approval dollar threshold shall be submitted to the BPC for concurrence before being forwarded to the contracting activity competition advocate for approval. Justifications requiring approval by the PE shall be further submitted for the concurrence of the contracting activity competition advocate and the HCA, or designee, before being forwarded to the PE for approval.

(b) After approval by the PE, the signed original will be returned to the contracting activity and one copy will be retained by the PPRG, JMD.

(c) Pursuant to FAR 6.304(c), a class justification for other than full and open competition shall be approved in accordance with bureau procedures.

Subpart 2806.5—Competition Advocates

2806.501 Requirement.

In accordance with FAR 6.501:

(a) The Assistant Director, Procurement Policy and Review Group, Management and Planning Staff, Justice Management Division, has been designated as the Competition Advocate for the Department of Justice.

(b) The agency head will appoint, in each bureau, an official to be the contracting activity competition advocate. The contracting activity competition advocates shall be vested with the overall responsibility for competition activities within their contracting activity. No individual in the contracting office at or below the level of chief of the contracting office may serve as the contracting activity competition advocate. An individual at any level above the BPC may serve as contracting activity competition advocate.

2806.502 Duties and responsibilities.

In addition to the duties and responsibilities set forth in FAR 6.502(b) and elsewhere in this chapter, contracting activity competition advocates shall:

(a) Actively enforce the Department's Competition Advocacy Program within the contracting activity and ensure that systems are established for the effective internal control of contracting activity functions and activities which implement the Department's Competition Advocacy Program.

(b) Implement specific goals and objectives to enhance competition and the acquisition of commercial items.

(c) Prepare and submit to the DOJ Competition Advocate, by November 30 of each year, an annual report of competition advocacy activities conducted during the prior fiscal year.

PART 2807—ACQUISITION PLANNING

Subpart 2807.1—Acquisition Plans

Sec.
2807.102 Policy.
2807.102–70 Applicability.
2807.103 Agency-head responsibilities.
2807.103–70 Other officials' responsibilities.
2807.105 Contents of written acquisition plans.

Subpart 2807.5—Inherently Governmental Functions

2807.503 Policy.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16124, Apr. 2, 1998, unless otherwise noted.

Subpart 2807.1—Acquisition Plans

2807.102 Policy.

(a)(1) In accordance with FAR 7.1, DOJ contracting activities shall perform acquisition planning and conduct market research for all acquisitions in order to promote and provide for:

(i) Full and open competition (see FAR part 6);

(ii) Maximum practicable competition for those acquisitions where full and open competition is not required by FAR part 6; and

(iii) The acquisition of commercial items or, when commercial items are not available, nondevelopmental items to the maximum extent practicable.

(2) The degree of planning and market research may vary, depending on such factors as the acquisition's size, scope and complexity.

(b) Acquisition planning shall be the joint responsibility of both the contracting and program offices. All acquisition plans shall be prepared sufficiently in advance of solicitation release dates to ensure that requirements are presented in a way that promotes full and open competition and provides sufficient time for the identification and resolution of impediments that could delay the acquisition or lead to increased cost or technical risk.

2807.102–70 Applicability.

(a) Planning commensurate with the complexity and dollar value of the individual requirement shall be performed for all acquisitions, except for those acquisitions listed in paragraph (c) of this subsection which may be exempt from the planning process. Heads of contracting activities may authorize the use of oral plans for simple and/or small dollar acquisitions. When oral plans are used, the file should be documented with the name of the individual who approved the plan.

(b) Written acquisition plans shall be prepared for all major systems acquisitions as defined in 2834.002.

(c) The following types of acquisitions may be exempt from the acquisition planning program;

(1) Architect-engineering services;

(2) Unsolicited proposals (when deemed innovative and unique in accordance with FAR 15.5);

(3) Regulated utility services where services are available from only one source;

(4) Acquisitions made from or through other Government agencies; and

(5) Contract modifications which exercise an option or add funds to an incrementally funded contract (provided there is an approved acquisition planning document for the original action and there is no significant deviation from that plan).

2807.103 Agency-head responsibilities.

The AAG/A may establish acquisition planning criteria and thresholds for those bureaus who:

(a) Fail to allow ample time for conducting competitive acquisitions;

(b) Develop a pattern of awarding urgent requirements that generally restrict competition;

(c) Fail to identify identical or like requirements that, where appropriate, can be combined under one solicitation and miss opportunities to obtain lower costs through volume purchasing, reduce administrative costs in processing one contract action versus multiple actions, and standardize goods and services.

2807.103–70 Other officials' responsibilities.

(a) In accordance with FAR 7.1, the HCA shall develop an acquisition planning program for all acquisitions to ensure that its needs are met in the most effective, economical, the timely manner.

(b) Heads of contracting activities have the flexibility to develop programs that are best suited to their individual needs. Criteria and thresholds shall be established at which increasingly greater detail and formality in the planning process is required. DOJ components are encouraged to keep paperwork to a minimum and to put a premium on simplicity.

(c) HCAs shall ensure that, during the acquisition planning phase, requirements personnel consider the use of:

(1) The metric system of measurement consistent with 15 U.S.C. 2205(b); and

(2) Environmentally preferable and energy-efficient products and services.

2807.105 Contents of written acquisition plans.

(a) HCAs shall prescribe format and content of acquisition planning documents that are commensurate with the complexity and dollar value of the individual acquisition (sample acquisition planning documents for both simple and complex acquisitions will be make available by PPRG, JMD, and may be used or modified as appropriate).

(b) HCAs shall include, at a minimum, the content elements at FAR 7.105 and 7.106 for all major systems acquisitions as defined in 2834.002.

Subpart 2807.5—Inherently Governmental Functions

2807.503 Policy.

The requirements official shall provide the contracting officer, concurrent with the transmittal of the statement of work (or modification thereof), a written determination that none of the functions to be performed are inherently governmental. Any disputes concerning this determination shall be resolved by the contracting officer, after consultation with the requirements official. The contracting officer's determination shall be final.

PART 2808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 2808.8—Acquisition of Printing and Related Supplies

Sec.
2808.802 Policy.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2808.8—Acquisition of Printing and Related Supplies

2808.802 Policy.

The Director, Facilities and Administrative Services Staff, has been designated to serve as the central printing authority for the Department.

[63 FR 16125, Apr. 2, 1998]

PART 2809—CONTRACTOR QUALIFICATIONS

Subpart 2809.4—Debarment Suspension, and Ineligibility

Sec.
2809.402 Policy.
2809.404 List of parties excluded from Federal procurement and nonprocurement programs.
2809.405 Effect of listing.
2809.405–1 Continuation of current contracts.

Subpart 2809.5—Organizational and Consultant Conflict of Interest

2809.503 Waiver.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16125, Apr. 2, 1998, unless otherwise noted.

Subpart 2809.4—Debarment, Suspension, and Ineligibility

2809.402 Policy.

Contracting activities shall:

(a) Consider debarment or suspension of a contractor when cause is shown as listed under FAR 9.406–2 and FAR 9.407–2. Contracting staffs should consult with their appropriate legal counsel prior to making a decision to initiate debarment or suspension proceedings. If a determination is made that available facts do not justify beginning debarment or suspension proceedings, the file should be documented accordingly. This determination should be subject to reconsideration if new information or additional fact-finding so justifies.

(b) If the decision is made to initiate debarment and/or suspension of a contractor, immediately prepare a notice in accordance with FAR 9.406–3(c) of FAR 9.407–3(c). The draft notice, along with the administrative file containing all relevant facts and analysis shall be forwarded to the PE, as the debarring and suspending official, following review by the activity's legal counsel and BPC.

(c) The PE shall:

(1) Review the notice and administrative file for sufficiency and provide for review by other DOJ officials as considered appropriate;

(2) If it is determined that action is warranted, give the contractor prompt notice of the proposed debarment or suspension, in accordance with FAR 9.406–3(c) or FAR 9.407–3(c);

(3) Direct additional fact-finding as necessary when material facts are in dispute.

(4) Notify the contractor of the final decision to debar or suspend, including a decision not to debar or suspend, in accordance with FAR 9.406–3(c) and FAR 9.407–3(c).

2809.404 List of parties excluded from Federal procurement and nonprocurement programs.

(a) The PE shall:

(1) Provide GSA notification of the information set forth in FAR 9.404(b)

within five working days after debarring or suspending a contractor or modifying or rescinding such an action.

(2) Maintain agency-wide records of debarred or suspended contractors in accordance with FAR 9.404.

(b) Contracting activities shall provide an effective system to ensure that contracting staff consult the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'' prior to soliciting offers from, awarding or extending contracts to, or consenting to subcontracts with contractors on the list.

2809.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and bureaus shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the HCA determines that there is a compelling reason for such action and the PE approves such determinations.

(b) Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected unless the HCA determines in writing that there is a compelling reason to consider the bid and the PE approves such action.

(c) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the HCA determines in writing that there is a compelling reason to do so and the PE approves such action.

2809.405–1 Continuation of current contracts.

(a) In accordance with FAR 9.405–1, contracting activities may continue contracts or subcontracts in existence at the time a contractor is suspended or debarred unless it is determined that termination of the contract is in the best interest of the Government. In making this determination, contracting activities shall consider the seriousness of the act or omission leading to the debarment or suspension, the effect of debarment or suspension on the contractor's ability to continue operations, and the Department's ability to safeguard its interests and receive satisfactory performance.

(b) Contracting activities shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the HCA states, in writing, the compelling reasons for renewal or extension and the PE approves such action.

Subpart 2809.5—Organizational and Consultant Conflicts of Interest

2809.503 Waiver.

The HCA may waive any general rule or procedure of FAR 9.5 by determining that its application in a particular situation would not be in the Government's interest.

PART 2811—DESCRIBING AGENCY NEEDS

Sec.
2811.001 Definitions.
2811.002 Policy.

Subpart 2811.1—Selecting and Developing Requirements Documents

2811.103 Market acceptance.
2811.104–70 Brand-name or equal description.

Subpart 2811.6—Priorities and Allocations

2811.603 Procedures.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16126, Apr. 2, 1998, unless otherwise noted.

2811.001 Definitions.

Dual systems means the use of both inch-pound and metric systems. For example, an item is designed, produced and described in inch-pound values with soft metric values also shown for information or comparison purposes.

Hybrid systems means the use of both inch-pound and standard metric values in specifications, standards, supplies, and services; e.g., an engine with internal parts in metric dimensions and external fittings or attachments in inch-pound dimensions.

Metric system means the International System of Units established by the General Conference of Weights and Measures in 1960.

Soft metric means the result of mathematical conversion of inch-pound measurements to metric equivalents in specifications, standards, supplies, and services. The physical dimensions are not changed.

2811.002 Policy.

Consistent with the policy expressed in FAR 11.002(b), solicitations must include specifications and purchase descriptions stated in metric units of measurement whenever metric is the accepted industry system. Whenever possible, commercially developed metric specifications and internationally, or domestically developed voluntary standards, using metric measurements, must be adopted. While an industry is in transition to metric specifications, solicitations must include requirements documents stated in soft metric, hybrid, or dual systems, except when impractical or inefficient.

Subpart 2811.1—Selecting and Developing Requirements Documents

2811.103 Market acceptance.

Pursuant to FAR 11.103, the HCA or designee at a level not lower than the BPC has the authority to require offerors to demonstrate that the items offered meet the criteria set forth in FAR 11.103(a).

2811.104–70 Brand-name or equal description.

When a brand-name or equal description is used, the clause set forth in 2852.211–70, Brand-name or Equal, shall be inserted into the solicitation.

Subpart 2811.6—Priorities and Allocations

2811.603 Procedures.

The PE is the agency official delegated authority to exercise priority authority on behalf of the Department. Any request for a priority rating on a contract or order must be submitted to PPRG, JMD, in accordance with the procedures in this subpart.

(a) The requesting activity shall submit, to the PE, a description of the supplies or services requiring a priority rating and a complete justification for the necessity of a rated order including the method and type of contract and the anticipated award date. The justification must also state the level of priority rating requested and comply with the requirements of the Defense Priorities and Allocations System.

(b) Upon receipt, the PPRG shall review the request for completeness and establish appropriate liaison with the Department of Commerce (DOC), the administering agency. Depending on the nature of the requirement, the PPRG may schedule a meeting with DOC officials to present the proposal. In such cases, a representative from the requiring activity may be requested to attend.

(c) DOJ activities requesting rated orders that concern classified material shall call PPRG before submitting their request to ensure appropriate transmission and handling between the requesting activity and PPRG.

PART 2812—ACQUISITION OF COMMERCIAL ITEMS

Subpart 2812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.
2812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

2812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Pursuant to FAR 12.302(c), the HCA or designee at a level not lower than the BPC is authorized to approve clauses or additional terms or conditions for inclusion in solicitations or contracts for commercial items that

are inconsistent with customary commercial practices.

[63 FR 16127, Apr. 2, 1998]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2813—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 2813.3—Simplified Acquisition Methods

Sec.
2813.305 Imprest funds and third party drafts.
2813.307 Forms.

Subpart 2813.70—Certified Invoice Procedure

2813.7001 Policy.
2813.7002 Procedure.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75 (j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16127, Apr. 2, 1998, unless otherwise noted.

Subpart 2813.3—Simplified Acquisition Methods

2813.305 Imprest funds and third party drafts.

Regulations governing the operation and procedures of the imprest fund shall be contained in internal bureau regulations. Individuals delegated the authority to withdraw from the imprest fund are further subject to the limitations contained in their delegation memorandum.

2813.307 Forms.

In accordance with FAR 13.307, bureaus may use order forms other than Standard Form (SF) 1449, OF 347 and 348 and may print on those forms, clauses considered to be suitable for purchases.

(a) Contracting activities using the SF 44 will be responsible for instructing authorized users as to the limitations and procedures for use of the form as outlined in FAR 13.306.

(b) Since the SF 44 is an accountable form, a record shall be maintained of: serial numbers of the forms; to whom issued; and, the date issued. SF 44s shall be kept securely under lock and key to prevent unauthorized use. A reservation of funds shall be established to cover total anticipated expenditures prior to use of the SF 44.

Subpart 2813.70—Certified Invoice Procedure

2813.7001 Policy.

Under limited circumstances as described in this subpart, supplies or services directly related to mission accomplishment, may be acquired on the open market from local suppliers at the site of the work or use point, using vendor's invoices under the certified invoice procedure, instead of issuing purchase orders. Certified invoice procedures may not be used to place orders under established contracts.

2813.7002 Procedure.

(a) Purchases utilizing the certified invoice procedure shall be effected only in accordance with FAR part 13 and this part 2813, subject to the following:

(1) The amount of any one purchase does not exceed the micro-purchase threshold;

(2) A purchase order is not required by either the supplier or the Government;

(3) Appropriate invoices can be obtained from the supplier; and,

(4) The items to be purchased shall be domestic source end products, except as provided in FAR subpart 25.1.

(b) Use of the certified invoice procedures does not eliminate the requirements in FAR part 13 or this part 2813 that are applicable to purchases of this dollar threshold.

(c) The chief of the contracting office, as defined in 2802.101(c), shall delegate the authority to use the certified invoice procedure. Each delegation must specify any limitations placed on the individual's use of these procedures, such as limits on the amount of each purchase, or limits on the commodities, or services which can be procured.

(d) Each individual using this purchasing technique shall require the supplier to immediately submit properly prepared invoices which itemize

property or services furnished. Upon receiving the invoice, the individual making the purchase shall annotate the invoice with the date of receipt, verify the arithmetic accuracy of the invoiced amount and verify on the invoice that the supplies and/or services have been received and accepted. If the invoice is correct, the individual making the purchase shall sign the invoice indicating acceptance and immediately forward it to the appropriate administrative office. The invoice shall be approved by the appropriate administrative office and forwarded to the Finance Office for payment within 5 workdays after receipt of the invoice, or acceptance of supplies or services, whichever is later. Before forwarding the invoice to Finance, the administrative office shall place the following statement on the invoice, along with the accounting and appropriation data:

I certify that these goods and/or services were received on _____ (date) an accepted on _____ (date). Oral purchase was authorized and no confirming order has been issued.

Signature _____

Date _____

_____

Printed or Typed Name and Title

PART 2814—SEALED BIDDING

Subpart 2814.4—Opening of Bids and Award of Contract

Sec.
2814.407 Mistakes in bids.
2814.407–3 Other mistakes disclosed before award.
2814.407–4 Mistakes after award.
2814.409 Information to bidders.
2814.409–2 Award of classified contracts.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16127, Apr. 2, 1998, unless otherwise noted.

Subpart 2814.4—Opening of Bids and Award of Contract

2814.407 Mistakes in bids.

2814.407–3 Other mistakes disclosed before award.

(a) The authority to make determinations under paragraphs (a), (b), (c), and (d) of FAR 14.407–3 is delegated to the HCA or designee at a level not lower that the BPC.

(b) The following procedures shall be followed when submitting doubtful cases of mistakes in bids to the Comptroller General for an advance decision:

(1) Requests for advance decisions submitted to the Comptroller General in cases of mistakes in bids shall be made by the HCA.

(2) Requests for advance decisions shall be in writing, dated, signed by the requestor, addressed to the Comptroller General of the United States, General Accounting Office, Washington, D.C. 20548, and contain the following:

(i) The name and address of the party requesting the decision;

(ii) A statement of the question to be decided, a presentation of all relevant facts, and a statement of the requesting party's position with respect to the question; and

(iii) Copies of all pertinent records and supporting documentation.

2814.407–4 Mistakes after award.

Proposed determinations under FAR 14.407 shall be coordinated with legal counsel in accordance with bureau procedures.

2814.409 Information to bidders.

2814.409–2 Award of classified contracts.

In accordance with FAR 14.409–2, the contracting officer shall advise the unsuccessful bidders, including any who did not bid, to take disposition action in accordance with bureau procedures.

PART 2815—CONTRACTING BY NEGOTIATION

Subpart 2815.2—Solicitation and Receipt of Proposals and Information

Sec.
2815.205 Issuing solicitations.
2815.207 Handling proposals and information.

Subpart 2815.4—Contract Pricing

2815.404 Proposal analysis.
2815.404–2 Information to support proposal analysis.
2815.404–4 Profit.
2815.407–4 Should-cost review.

Subpart 2815.6—Unsolicited Proposals

2815.606 Agency procedures.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16128, Apr. 2, 1998, unless otherwise noted.

Subpart 2815.2—Solicitation and Receipt of Proposals and Information

2815.205 Issuing solicitations.

Solicitations involving classified information shall be handled in accordance with the policies and procedures contained in Departmental regulations and other offices, boards, divisions, and bureaus (OBDBs) prescribed policies and regulations that supplement Departmental regulations.

2815.207 Handling proposals and information.

Classified proposals and quotations shall be handled in accordance with the current DOJ Order agency regulations and any supplemental directives or orders implemented by the OBDBs. Such supplemental regulations must have the prior approval of the AAG/A before implementation in accordance with the Departmental regulations.

Subpart 2815.4—Contract Pricing

2815.404 Proposal analysis.

2815.404–2 Information to support proposal analysis.

All requests for field pricing support shall be made by the contracting officer directly to the cognizant audit agency. A copy of the request for such services shall be sent to the Department of Justice Office of the Inspector General (OIG) at the address shown in this subsection at the time it is mailed to the cognizant audit agency. A copy of each report received shall also be sent to the OIG. Requests for other audit assistance may be made to the Assistant Inspector General for Audits, Suite 5000, 1425 New York Avenue, NW., Washington, DC 20530.

2815.404–4 Profit.

If a contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable and the contracting officer has taken all authorized actions to negotiate a reasonable price or profit or fee without success, the contracting officer shall then refer the contract action to the HCA or designee.

2815.407–4 Should-cost review.

In acquisitions for which a program should-cost review is conducted, the required should-cost review team report shall be prepared in accordance with bureau procedures.

Subpart 2815.6—Unsolicited Proposals

2815.606 Agency procedures.

(a) Each contracting activity shall designate a point of contact for the receipt and handling of unsolicited proposals. Generally, the official designated shall be the BPC or immediate subordinate.

(b) The designated point of contact for each contracting activity shall provide for and coordinate receipt, review, evaluation, and final disposition of unsolicited proposals in accordance with FAR subpart 15.6.

PART 2816—TYPES OF CONTRACTS

Subpart 2816.5—Indefinite-Delivery Contracts

Sec.
2816.505 Ordering.

Subpart 2816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2816.601 Time-and-material contracts.
2816.602 Labor-hour contracts.
2816.603 Letter contracts.
2816.603–2 Application.
2816.603–3 Limitations.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75 (j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16128, Apr. 2, 1998, unless otherwise noted.

Subpart 2816.5—Indefinite-Delivery Contracts

2816.505 Ordering.

(a) In accordance with FAR 16.505(b)(4), the Department of Justice

Task Order and Delivery Order Ombudsman is the DOJ Competition Advocate.

(b) Heads of contracting activities shall designate a contracting activity Task Order and Delivery Order Ombudsman. This person may be the contracting activity competition advocate and must meet the qualification requirements of 2806.501(b).

(c) Contracting activity ombudsman shall review and resolve complaints from contractors concerning task or delivery orders placed by the contracting activity.

(d) Contractors not satisfied with the resolution of a complaint by a contracting activity ombudsman may request the Departmental Ombudsman to review the complaint.

Subpart 2816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2816.601 Time-and-material contracts.

In addition to the limitations listed in FAR 16.601(c), a time-and-materials contract may be used only after the contracting officer receives written approval from the chief of the contracting office. When the contracting officer is also the chief of the contracting office, the approval to use a time-and-materials type contract will be made at a level above the contracting officer.

2816.602 Labor-hour contracts.

The limitations set forth in 2816.601 for time-and-material contracts also apply to labor-hour contracts.

2816.603 Letter contracts.

2816.603–2 Application.

In cases where the contracting officer and the contractor cannot negotiate the definitization of a letter contract within 180 days after the date of the letter contract, or before completion of 40 percent of the work to be performed, the contracting officer may, with the written approval of the PE, revise and extend the definitization schedule. However, in no event shall the extension of the definitization schedule extend beyond the lesser of an additional 180 day period or the completion of 80 percent of the work to be performed. If at the end of the extension, the contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach an agreement on price or fee, the procedures set forth in FAR 51.216–25, 16.603–2, 15.8, and part 31 shall be followed, as applicable.

2816.603–3 Limitations.

A letter contract may be used only after the express written approval of the Procurement Executive. Requests for approval shall contain the rationale explaining why no other contract is suitable and shall include the approval of the HCA or designee. Under circumstances of compelling urgency which do not permit the time needed for written approval, oral approval must be obtained; however, written documentation to support the award and confirm the oral approval must be submitted as soon as practicable after award.

PART 2817—SPECIAL CONTRACTING METHODS

Subpart 2817.1—Multiyear Contracting

Sec.

2817.108 Congressional notification.

Subpart 2817.6—Management and Operating Contracts

2817.605 Award, renewal, and extension.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j); and 28 CFR 0.76(j).

SOURCE: 63 FR 16129, Apr. 2, 1998, unless otherwise noted.

Subpart 2817.1—Multiyear Contracting

2817.108 Congressional notification.

Pursuant to FAR 17.108(a), the original congressional notification shall be submitted to PPRG, JMD, for concurrence, coordination to the Attorney General, and subsequent transmission to the appropriate congressional committees.

Subpart 2817.6—Management and Operating Contracts

2817.605 Award, renewal, and extension.

In accordance with FAR 17.605(b), the contracting officer, following bureau procedures, shall review each management and operation contract, at appropriate intervals and at least once every 5 years.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2819—SMALL BUSINESS PROGRAMS

Subpart 2819.2—Policies

Sec.
2819.201 General policy.

Subpart 2819.5—Set-Asides for Small Business

2819.506 Withdrawing or modifying set-asides.

Subpart 2819.6—Certificates of Competency and Determinations of Eligibility

2819.602 Procedures.
2819.602–1 Referral.

Subpart 2819.70—Forecasts of Expected Contract Opportunities

2819.7001 General.
2819.7002 Procedures.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16129, Apr. 2, 1998, unless otherwise noted.

Subpart 2819.2—Policies

2819.201 General policy.

(a) The Office of Small and Disadvantaged Business Utilization (OSDBU) is organizationally attached to the Office of the Deputy Attorney General in accordance with 28 CFR 0.18a, but is located in JMD for administrative purposes.

(b) The Director, OSDBU, is responsible for the administration of the DOJ small and disadvantaged business programs in accordance with the duties described in 28 CFR 0.18a.

Subpart 2819.5—Set-Asides for Small Business

2819.506 Withdrawing or modifying set-asides.

(a) Before a contracting officer may withdraw or modify a small business set-aside, the contracting officer shall seek the concurrence of the Director, OSDBU.

(b) If the contracting officer and the Director, OSDBU, are unable to agree on the proposed withdrawal or modification, the Director, OSDBU shall:

(1) Forward the matter to the Small Business Administration (SBA) procurement center representative assigned to the Department of Justice for resolution; or,

(2) Forward the matter to the PE for resolution if an SBA procurement center representative is not assigned to the Department of Justice.

Subpart 2819.6—Certificates of Competency and Determinations of Eligibility

2819.602 Procedures.

2819.602–1 Referral.

In accordance with FAR 19.602–1(a)(2), the matter shall be submitted to the Director, OSDBU, for subsequent referral to the cognizant SBA Regional Office.

Subpart 2819.70—Forecasts of Expected Contract Opportunities

2819.7001 General.

Section 501 of Public Law 100–656, the Business Opportunity Development Reform Act of 1988, requires executive agencies having contract actions in excess of $50 million in Fiscal Year 1988 or later to prepare an annual forecast of expected contract opportunities, or classes of contract opportunities that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing.

2819.7002 Procedures.

The content and format of bureau annual forecasts of contract opportunities, as well as the updates to their contracting forecasts shall be as specified by the Director, OSDBU.

PART 2822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2822.1—Basic Labor Policies

Sec.
2822.101 Labor relations.
2822.101–1 General.
2822.101–3 Reporting labor disputes.
2822.103 Overtime.
2822.103–4 Approvals.

Subpart 2822.4—Labor Standards for Contracts Involving Construction

2822.406 Administration and enforcement.
2822.406–8 Investigations.

Subpart 2822.13—Special Disabled and Vietnam Era Veterans

2822.1303 Waivers.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16129, Apr. 2, 1998, unless otherwise noted.

Subpart 2822.1—Basic Labor Policies

2822.101 Labor relations.

2822.101–1 General.

All matters regarding labor relations shall be handled in accordance with bureau procedures.

2822.101–3 Reporting labor disputes.

The office administering the contract shall report, directly to the contracting officer, any potential or actual labor disputes that may interfere with performing any contracts under its cognizance.

2822.103 Overtime.

2822.103–4 Approvals.

The inclusion of a dollar amount greater than zero in paragraph (a) of the FAR clause 52.222–2, Payment For Overtime Premiums, must be approved at a level above the contracting officer. Such approval shall be reflected by the signature of the approving official on the contracting officer's written determination made in accordance with FAR 22.103–4.

Subpart 2822.4—Labor Standards for Contracts Involving Construction

2822.406 Administration and enforcement.

2822.406–8 Investigations.

Pursuant to FAR 22.406–8(d), the contracting officer shall prepare and forward the report of violations to the HCA or designee at a level not lower than the BPC. That official shall be responsible for processing the report in accordance with FAR 22.406–8(d)(2).

Subpart 2822.13—Special Disabled and Vietnam Era Veterans

2822.1303 Waivers.

In accordance with FAR 22.1303, all requests for waivers shall be forwarded from the HCA to PPRG, JMD, for processing to the Attorney General.

PART 2823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 2823.1—Pollution Control and Clean Air and Water

Sec.
2823.107 Compliance responsibilities.

Subpart 2823.3—Hazardous Material Identification and Material Safety Data

2823.303–70 Departmental contract clause.

Subpart 2823.4—Use of Recovered Materials

2823.403 Policy.
2823.404 Procedures.
2823.404–70 Affirmative procurement program for recycled materials.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16130, Apr. 2, 1998, unless otherwise noted.

Subpart 2823.1—Pollution Control and Clean Air and Water

2823.107 Compliance responsibilities.

If a contracting officer becomes aware of noncompliance with clean air, water or other affected media standards in facilities used in performing nonexempt contracts, that contracting officer shall notify the Department of Justice Environmental Executive (DOJEE).

Subpart 2823.3—Hazardous Material Identification and Material Safety Data

2823.303–70 Departmental contract clause.

The contracting officer shall insert the clause at 2852.223–70, Unsafe Conditions Due to the Presence of Hazardous Material, in all solicitations and contracts, as appropriate, if the contract will require the performance of services on Government-owned or Government-leased facilities.

Subpart 2823.4—Use of the Recovered Materials

2823.403 Policy.

It is the policy of DOJ that its contracting activities and contractors that procure on behalf of DOJ, acquire EPA designated items in accordance with EPA's Comprehensive Procurement Guideline For Products Containing Recovered Materials (CPG) (40 CFR part 247). The recommended minimum recovered materials content of EPA designated items is set forth in EPA's Recovered Materials Advisory Notices (RMANs) and in E.O. 12873 as amended. These publications are available from the DOJEE.

2823.404 Procedures.

(a) The program office initiating the acquisition is responsible for determining if recovered materials should be included in the specification. Procurement offices are responsible for informing program offices of the requirement for writing specifications for designated items that include minimum content standards specified in the RMANs.

(b) If the program office chooses to procure designated items containing less than the minimum content standards, and program office must justify that decision in writing and include a copy of the signed justification with the procurement request package. FAR 23.404(b)(3) sets forth the only acceptable justifications for acquiring EPA designated items which do not meet the minimum content standard. The contracting officer is the approving official for justifications made pursuant to FAR 23.404(b)(3). Contracting officers are responsible for including a signed copy of the justification in the acquisition file and submitting a copy of the approved justification to the DOJEE.

2823.404–70 Affirmative procurement program for recycled materials.

(a) *Recovered materials preference program.* Preference will be given to procuring and using products containing recovered materials rather than products made with virgin materials when adequate competition exists, and when price, performance and availability are equal.

(b) *Promotion program.* The DOJEE has primary responsibility for actively promoting the acquisition of products containing recycled materials throughout DOJ. Technical and procurement personnel will cooperate with the DOJEE to actively promote DOJ's Affirmative Procurement Program (APP).

(c) *Procedures for vendor estimation, verification and certification*—(1) *Estimation.* The contractor shall provide estimates of the total percentage(s) of recovered materials for EPA designated items to be used in products or services provided.

(2) *Certification.* Contracting officers shall provide copies of all vendor and subcontractor certifications required by FAR 23.405(b) to the DOJEE.

(3) *Vertification.* The DOJEE is responsible for periodically reviewing vendor certification documents and waivers as part of the annual review and monitoring process to determine if DOJ is in compliance with E.O. 12873 and subsequent amendments.

PART 2824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2824.2—Freedom of Information Act

Sec.
2824.202 Policy.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16130, Apr. 2, 1998, unless otherwise noted.

Subpart 2824.2—Freedom of Information Act

2824.202 Policy.

Procedures for processing Freedom of Information Act requests are set forth in Departmental regulations and 28 CFR part 16.

[63 FR 16130, Apr. 2, 1998]

PART 2825—FOREIGN ACQUISITION

Subpart 2825.2—Buy American Act—Construction Materials

Sec.
2825.203 Evaluating offers.

Subpart 2825.3—Balance of Payments Program

2825.302 Policy.

Subpart 2825.9—Additional Foreign Acquisition Clauses

2825.901 Omission of audit clause.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16130, Apr. 2, 1998, unless otherwise noted.

Subpart 2825.2—Buy American Act—Construction Materials

2825.203 Evaluating offers.

The HCA, or designee at a level not lower than the BPC, is the agency official authorized to make determination that using a particular domestic construction material would unreasonably increase the cost of the acquisition or would be impracticable.

Subpart 2825.3—Balance of Payments Program

2825.302 Policy.

The HCA, or designee at a level not lower than the BPC, is the agency official authorized to make determinations under FAR 25.302(b)(3), as well as authorize the use of a differential greater than 50 percent, as specified in FAR 25.302(c), for the evaluation of domestic and foreign offers under the Balance of Payments Program. All determinations made under this section shall be in writing and shall set forth the facts and circumstances supporting the determination. Determinations shall be reviewed and concurred in by the contracting activity's legal counsel.

Subpart 2825.9—Additional Foreign Acquisition Clauses

2825.901 Omission of audit clause.

The HCA, or designee at a level not lower than the BPC, is the agency official authorized to make determinations under FAR 25.901(c). All determinations made under this authority shall be reviewed and concurred in by the contracting activity's legal counsel prior to being approved by the authorized agency official.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2828—BONDS AND INSURANCE

Subpart 2828.1—Bonds

Sec.
2828.106 Administration.
2828.106–6 Furnishing information

Subpart 2828.2—Sureties

2828.204 Alternatives in lieu of corporate or individual sureties.

Subpart 2828.3—Insurance

2828.307–1 Group insurance plans.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16131, Apr. 2, 1998, unless otherwise noted.

Subpart 2828.1—Bonds

2828.106 Administration.

2828.106–6 Furnishing information.

In accordance with FAR 28.106–6(c), the HCA, or designee at a level not lower than the BPC, is the agency official authorized to furnish the certified copy of the bond and the contract.

Subpart 2828.2—Sureties

2828.204 Alternatives in lieu of corporate or individual sureties.

When contractors submit any of the types of security described in FAR 28.204–1 through 28.204–3 in lieu of furnishing sureties, the contracting officer shall enter into an agreement with the contractor covering a bank account, and suitable covenants protecting the Government's interest, in which the securities will be deposited to protect against their loss during the period of the bond obligation.

Subpart 2828.3—Insurance

2828.307–1 Group insurance plans.

Under cost-reimbursement contracts, before buying insurance under a group insurance plan, the contractor shall submit the plan to the contracting officer for review and approval. During review, the contracting office should utilize all sources of information available such as audit, industry practices, etc., to determine that acceptance of the group insurance plan, as submitted, is in the Government's best interest.

PART 2829—TAXES

Subpart 2829.3—State and Local Taxes

Sec.
2829.303 Application of State and local taxes to Government contractors and subcontractors.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2829.3—State and Local Taxes

2829.303 Application of State and local taxes to Government contractors and subcontractors.

(a) It is DOJ policy that DOJ contracts shall not contain clauses expressly designating prime contractors as agents of the Government for the purpose of avoiding State and local taxes.

(b) Although circumstances may exist under which a contractor is an agent of the Government, even in the absence of a contract clause expressly designating a contractor as such, these circumstances should be extremely rare. Before any DOJ contracting activity may contend that any of its contractors are agents of the Government for the purpose of claiming immunity from State and local sales and use taxes, the matter will be referred to the AAG/A for review, and approval to ensure that DOJ policy is complied with and that the contracting activity's contention is fully in accordance with the pertinent legal principles and precedents. Each case forwarded will be reviewed by the HCA before referral to the AAG/A. The referral will include all pertinent data on which the contracting activity's contention is based, together with a thorough analysis of all relevant legal precedents.

(c) Whenever clauses, procedures, and business practices are cited by DOJ

contracting activities to support the contention that a contractor is an agent of the Government for the purpose of immunity from a State or local sales or use tax, contracting activities should whenever possible, devise alternative clauses, procedures, and practices for future use which will accomplish their intended purpose without providing the basis for contention that the contractor is an agent of the Government for the purpose of immunity from State and local sales or use taxes. Any referral to the AAG/A for approval under this subpart shall include comments on the extent to which alternative clauses, procedures, or practices may be utilized to accomplish the intended purpose without providing the basis for the contention that the contractor is an agent of the Government for the purpose of immunity from State and local sales or use taxes.

[63 FR 16131, Apr. 2, 1998]

PART 2830—COST ACCOUNTING STANDARDS (CAS) ADMINISTRATION

Subpart 2830.2—CAS Program Requirements

Sec.
2830.201–5 Waiver.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2830.2—CAS Program Requirements

2830.201–5 Waiver

A request for a waiver of the Cost Accounting Standards requirements shall be forwarded to the HCA after the contracting officer has made the determination required by FAR 30.201–5.

[63 FR 16131, Apr. 2, 1998]

PART 2831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 2831.1—Applicability

Sec.
2831.101 Objectives.
2831.109 Advance agreements.

Subpart 2831.2—Contracts With Commercial Organizations

2831.205 Selected costs.
2831.205–32 Precontract costs.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16132, Apr. 2, 1998, unless otherwise noted.

Subpart 2831.1—Applicability

2831.101 Objectives.

(a) The PE is the official authorized to grant individual deviations from the cost principles of FAR part 31. All requests for individual deviations must cite the facts and circumstances surrounding the request as well as attempts to negotiate contractor compliance.

(b) Requests for class deviations from the cost principles set forth in FAR part 31 will be forwarded through the PE prior to submission to the Civilian Agency Acquisition Counsel. Requests must contain the information required in paragraph (a) of this section.

2831.109 Advance agreements.

(a) The DOJ and bureau contracting officers are encouraged to negotiate advance agreements concerning the treatment of special or unusual costs to avoid possible subsequent disputes or disallowance of costs based upon unreasonableness or nonallowability. All such agreements shall be negotiated in accordance with FAR 31.109 prior to the contractor incurring such costs. Contracting officers are not authorized to agree to a treatment of costs which would be inconsistent with FAR part 31.

(b) Prior to negotiating an advance agreement, contracting officers shall make a written determination setting forth the reasons and rationale for entering into such agreements. In addition, the determination will set forth the nature, the duration, and which contract or contracts are covered by the proposed agreement. All determinations required by this subpart will be reviewed and approved at a level above the contracting officer prior to negotiation of the proposed agreement. The approved determination will be placed in the contract file.

(c) All advance agreements shall be in writing and shall set forth the nature, duration, and contract or contracts covered by the agreements. Advance agreements will be signed by both the contractor and the contracting officer, and made a part of the contract file. Copies of executed advance agreements will be distributed to the cognizant audit office when applicable.

(d) All advance agreements will be incorporated in full in the subsequent contract(s) to which they pertain, prior to award.

Subpart 2831.2—Contracts With Commercial Organizations

2831.205 Selected costs.

2831.205–32 Precontract costs.

(a) Precontract cost authorizations shall be used only on cost reimbursement contracts, contain no provisions for payment of fees, and be treated as advance agreements in accordance with the provisions of FAR 31.109 and 2831.109.

(b) The following limitations apply to the execution of precontract cost authorizations.

(1) Contracts which are estimated to be greater than the simplified acquisition threshold may contain a precontract cost authorization providing the authorization is for a period of 60 days or less and the dollar amount does not exceed the lesser of the simplified acquisition threshold or one third of the total estimated costs (including fee if any) of the contract.

(2) the limitation expressed under paragraph (b) of this section may be increased in unusual circumstances as appropriate, with the written approval of the HCA, but in no event shall they exceed one-third of the total estimated costs (including fee if any) of the contract or be for periods of time which exceed 90 days.

PART 2832—CONTRACT FINANCING

Subpart 2832.1—Non-Commercial Item Purchase Financing

Sec.
2832.114 Unusual contract financing.

Subpart 2832.4—Advance Payments for Non-Commercial Items

2832.402 General.
2832.407 Interest.

Subpart 2832.9—Prompt Payment

2832.903 Policy.

Subpart 2832.11—Electronic Funds Transfer

2832.1110 Solicitation provision and contract clauses.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16132, Apr. 2, 1998, unless otherwise noted.

Subpart 2832.1—Non-Commercial Item Purchase Financing

2832.114 Unusual contract financing.

The HCA, or designee at a level not lower than the BPC, is the official authorized to approve unusual contract financing as set forth in FAR 31.114.

Subpart 2832.4—Advance Payments for Non-Commercial Items

2832.402 General.

(a) The authority to sign written determinations and findings with respect to making advance payments is vested in the HCA.

(b) Prior to awarding a contract which contains provisions for making advanced payments, the contract terms and conditions concerning advance payments must be approved at a level above the contracting officer, with advice and consent of the bureau's legal counsel.

(c) The contracting officer shall coordinate with the activity that is to provide contract financing for advance payments, the bureau's disbursing or finance office, or the Treasury Department, as appropriate, to ensure that all

FAR and departmental requirements are met.

2832.407 Interest.

In cases where advance payments may be made on an interest free basis (FAR 32.407(d)), the intent to make such interest free advance payments, and the circumstance permitting interest free advance payments, shall be set forth in the original determination and findings and be approved in accordance with 2832.402.

Subpart 2832.9—Prompt Payment

2832.903 Policy.

The HCA is responsible for promulgating policies and procedures to implement FAR 32.9 and to ensure that, when specifying due dates, full consideration will be given to the time reasonably required by Government officials to fulfill their administrative responsibilities under the contract.

Subpart 2832.11—Electronic Funds Transfer

2832.1110 Solicitation provision and contract clauses.

When the clause at FAR 52.232–34, Payment by Electronic Funds Transfer-Other than Central Contractor Registration, is required the contracting officer may insert in paragraph (b)(1) of the clause a particular time after award, such as a fixed number of days, or an event such as the submission of the first request for payment, to establish the point at which contractors' EFT information must be provided.

[64 FR 37045, July 9, 1999]

PART 2833—PROTESTS, DISPUTES, AND APPEALS

Subpart 2833.1—Protests

Sec.
2833.101 Definitions.
2833.102 General.
2833.103 Protests to the agency.

Subpart 2833.2—Disputes and Appeals

2833.209 Suspected fraudulent claims.
2833.211 Contracting officer's decision.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16132, Apr. 2, 1998, unless otherwise noted.

Subpart 2833.1—Protests

2833.101 Definitions.

(a) *Agency Protest Official* means the official, other than the contracting officer, designated to review and decide procurement protests filed with a contracting activity of the Department of Justice.

(1) This person will be at a level above that of the Contracting Officer, will be knowledgeable about the acquisition process in general and will have no programmatic interest in the procurement.

(2) This official shall be an individual designated by the head of the contracting activity and may be the Competition Advocate.

(b) *Deciding Official* means the person chosen by the protestor to decide the agency protest; it may be either the Contracting Officer or the Agency Protest Official.

(c) *Interested Party* means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

2833.102 General.

(a) This part describes policies and procedures for processing protests to the Department of Justice in accordance with Executive Order 12979, Agency Procurement Protests, dated October 25, 1995, and FAR 33.103. They are intended to be flexible and to provide for fair, quick, and inexpensive resolution of agency protests.

(b) Interested parties have the option of protesting to the Contracting Officer or to the Agency Protest Official.

(c) Contracting officers and potential protestors are encouraged to use their best efforts to resolve concerns through frank and open discussion, as required by FAR 33.103(b). In resolving concerns and/or protests, consideration should be given to the use of alternative dispute resolution techniques where appropriate.

(d) Responsibilities:

(1) Contracting Officers: (i) Include the provision at 2852.233–70 in all solicitations that are expected to exceed the simplified acquisition threshold.

(ii) If the protestor requests that the Contracting Officer decide the protest, or if the protest is silent on this issue, the Contracting Officer decides the protest using the procedures in this subpart and FAR 33.103.

(iii) If the protestor requests that the Agency Protest Official decide the protest, the Contracting Officer must ensure that the Agency Protest Official receives a copy of the materials served on the Contracting Officer within one business day after the filing date.

(2) Agency Protest Official: If the protestor requests that the Agency Protest Official decide the protest, the Official must use the procedures in this subpart and FAR 33.103 to provide an independent review of the issues raised in the protest.

2833.103 Protests to the agency.

(a) The filing time frames in FAR 33.103(e) apply. An agency protest is filed when the protest complaint is received at the location the solicitation designates for serving protests.

(b) An interested party filing an agency protest has the choice of requesting either that the Contracting Officer or the Agency Protest Official decide the protest.

(c) In addition to the information required by FAR 33.103(d)(2), the protest must:

(1) Indicate that it is a protest to the agency.

(2) Be filed with the Contracting Officer.

(3) State whether the protestor chooses to have the Contracting Officer or the Agency Protest Official decide the protest. If the protest is silent on this matter, the Contracting Officer will decide the protest.

(4) Indicate whether the protestor prefers to make an oral or written presentation of arguments in support of the protest to the deciding official.

(d) The decision by the Agency Protest Official is an alternative to a decision by the Contracting Officer on a protest. The Agency Protest Official will not consider appeals from a Contracting Officer's decision on an agency protest.

(e) The deciding official must conduct a scheduling conference with the protestor within five (5) days after the protest is filed. The scheduling conference will establish deadlines for oral or written arguments in support of the agency protest and for agency officials to present information in response to the protest issues. The deciding official may hear oral arguments in support of the agency protest at the same time as the scheduling conference, depending on availability of the necessary parties.

(f) Oral conferences may take place either by telephone or in person. Other parties may attend at the discretion of the deciding official.

(g) The protestor has only one opportunity to support or explain the substance of its protest. Department of Justice procedures do not provide for any discovery. The deciding official has discretion to request additional information from either the agency or the protestor. However, the deciding official will normally decide protests on the basis of information provided by the protestor and the agency.

(h) The preferred practice is to resolve protests through informal oral discussion.

(i) An interested party may represent itself or be represented by legal counsel. The Department of Justice will not reimburse the protester for any legal fees related to the agency protest.

(j) If an agency protest is received before contract award, the Contracting Officer must not make award unless the Head of the Contracting Activity makes a determination to proceed under FAR 33.103(f)(1). Similarly, if an agency protest is filed within ten (10) days after award, the Contracting Officer must stay performance unless the Head of the Contracting Activity makes a determination to proceed under FAR 33.103(f)(3). Any stay of award or suspension of performance remains in effect until the protest is decided, dismissed, or withdrawn.

(k) The deciding official must make a best effort to issue a decision on the protest within twenty (20) days after the filing date. The decision may be

oral or written. If oral, the deciding official must send a confirming letter within three (3) days after the decision using a means that provides receipt. The confirming letter must include the following information:

(1) State whether the protest was denied, sustained or dismissed.

(2) Indicate the date the decision was provided.

(l) If the deciding official sustains the protest, relief may consist of any of the following:

(1) Recommendation that the contract be terminated for convenience or cause.

(2) Recompeting the requirement.

(3) Amending the solicitation.

(4) Refraining from exercising contract options.

(5) Awarding a contract consistent with statute, regulation, and the terms of the solicitation.

(6) Other action that the deciding official determines is appropriate.

(m) If the Agency Protest Official sustains a protest, then within 30 days after receiving the Official's recommendations for relief, the Contracting Officer must either:

(1) Fully implement the recommended relief; or

(2) Notify the Agency Protest Official in writing of any recommendations have not been implemented and explain why.

(n) Proceedings on an agency protest may be dismissed or stayed if a protest on the same or similar basis is filed with a protest forum outside of the Department of Justice.

Subpart 2833.2—Disputes and Appeals

2833.209 Suspected fraudulent claims.

Contracting officers shall report suspected fraudulent claims to the Office of the Inspector General.

2833.211 Contracting officer's decision.

(a) The Agency Board of Contract Appeals (BCA), which will hear appeals from the decisions of bureau contracting officers, is the Department of Transportation BCA. The procedures set forth in 48 CFR chapter 63 shall apply.

(b) Pursuant to 28 CFR 0.45(i), the contact for all appeals of decisions of DOJ contracting officers which will be forwarded to the BCA under paragraph (a) of this section, is the Deputy Assistant Attorney General, Commercial Litigation Branch, Civil Division.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2834—MAJOR SYSTEM ACQUISITION

Subpart 2834.0—General

Sec.
2834.002 Policy.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2834.0—General

2834.002 Policy.

In accordance with Pub. L. 98–577, the Small Business and Federal Procurement Competition Enhancement Act of 1984, an executive agency may establish a dollar threshold for the designation of a major system. Accordingly, dollar thresholds for a major system under Office of Management and Budget Circular A–109 are designated in this section.

(a) *Major automated information system.* Within the Department of Justice, a major automated information system is one whose life-cycle cost is in excess of $100 million.

(b) *Major real property system.* (1) By purchase, when the assessed value of the property exceeds $60 million.

(2) By lease, when the annual rental charges, including basic services (e.g., cleaning, guards, maintenance), exceed $1.8 million.

(3) By transfer from another agency at no cost when the assessed value of the property exceeds $12 million.

(c) *Research and Development (R&D) System.* Any R&D activity expected to exceed $0.5 million, for the R&D phase is subject to OMB Circular A–109, unless exempted by the HCA.

(d) *Any other system or activity.* The HCA responsible for the system may designate any system or activity as a Major System under OMB Circular A–109 as a result of Departmental review, e.g., selected systems designed to support more than one principal organizational unit.

(e) *Exemption.* The AAG/A, upon recommendation by the HCA responsible for the system, may determine that because of the routine nature of the acquisition, the system (e.g., an information system utilizing only off-the-shelf hardware or software) will be exempt from the OMB Circular A–109 process, although by virtue of the life cycle costs, it would otherwise be identified as ''major'' in response to OMB Circular A–109.

[63 FR 16134, Apr. 2, 1998]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2842—CONTRACT ADMINISTRATION

Subpart 2842.15—Contractor Performance Information

Sec.
2842.1502 Policy.
2842.1503 Procedures.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16134, Apr. 2, 1998, unless otherwise noted.

Subpart 2842.15—Contractor Performance Information

2842.1502 Policy.

The head of each contracting activity shall be responsible for establishing past performance evaluation procedures and systems as required by FAR 42.1502 and 42.1503.

2842.1503 Procedures.

Past performance evaluation procedures and systems shall include, to the greatest practicable extent, the evaluation and performance rating factors set forth in the Office of Federal Procurement Policy best practices guide for past performance.

PART 2845—GOVERNMENT PROPERTY

Subpart 2845.1—General

Sec.
2845.105 Records of Government property.

Subpart 2845.5—Management of Government Property in the Possession of Contractors

2845.505–14 Report of Government Property.

Subpart 2845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2845.603 Disposal methods.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16134, Apr. 2, 1998, unless otherwise noted.

Subpart 2845.1—General

2845.105 Records of Government property.

If departmental elements maintain the Government's official property management records, the contract records may be kept as a separate account in the bureau's internal property management system, in which case the contracting officer or formally designated property administrator shall serve as custodian of the account.

Subpart 2845.5—Management of Government Property in the Possession of Contractors

2845.505–14 Report of Government Property.

(a) In compliance with FAR 45.505–14, by January 31 of each year, DOJ contractors shall furnish the cognizant contracting officer an annual report of the DOJ property for which they are accountable as of the end of the calendar year.

(b) By March 1 of each year, bureaus shall submit a summary report of Departmental property furnished under each contract, as of the end of the calendar year, to the Facilities and Administrative Services Staff, Justice Management Division. The report shall be categorized in accordance with FAR 45.505 and shall include contracts for which the bureau maintains the official government records.

Subpart 2845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2845.603 Disposal methods.

Policies pertaining to reutilization and disposal of DOJ property, including requirements for internal screening, waivers, and disposal reporting, are prescribed in the Justice Property Management Regulations Subpart 128–43. Unless otherwise specified, the ''plant clearance officer'' shall be a designated utilization and disposal representative of a bureau's property management office.

PART 2846—QUALITY ASSURANCE

Subpart 2846.6—Material Inspection and Receiving Reports

Sec.
2846.601 General.

Subpart 2846.7—Warranties

2846.704 Authority for use of warranties.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16134, Apr. 2, 1998, unless otherwise noted.

Subpart 2846.6—Material Inspection and Receiving Reports

2846.601 General.

Bureaus shall prescribe procedures and instructions for the use, preparation, and distribution of material inspection and receiving reports and commercial shipping document/packing lists to evidence Government inspection.

[63 FR 26739, May 14, 1998]

Subpart 2846.7—Warranties

2846.704 Authority for use of warranties.

The use of a warranty in an acquisition shall be approved at a level above the contracting officer.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2852.1—Instructions for Using Provisions and Clauses

Sec.
2852.102 Incorporating provisions and clauses.
2852.102–270 Incorporation in full text.

Subpart 2852.2—Text of Provisions and Clauses

2852.201–70 Contracting Officer's Technical Representative (COTR).
2852.211–70 Brand-name or equal.
2852.223–70 Unsafe conditions due to the presence of hazardous material.
2852.233–70 Protests filed directly with the Department of Justice.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16135, Apr. 2, 1998, unless otherwise noted.

Subpart 2852.1—Instructions for Using Provisions and Clauses

2852.102 Incorporating provisions and clauses.

2852.102–270 Incorporation in full text.

JAR provisions or clauses shall be incorporated in solicitations and contracts in full text.

Subpart 2852.2—Text of Provisions and Clauses

2852.201–70 Contracting Officer's Technical Representative (COTR).

As prescribed in subpart 2801.70, insert the following clause:

CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) (JAN 1985)

(a) Mr./Ms (Name) of (Organization) (Room No.), (Building), (Address), (Area Code & Telephone No.), is hereby designated to act as Contracting Officer's Technical Representative (COTR) under this contract.

(b) The COTR is responsible, as applicable, for: receiving all deliverable, inspecting and accepting the supplies or services provided hereunder in accordance with the terms and conditions of this contract; providing direction to the contractor which clarifies the contract effort, fills in details or otherwise serves to accomplish the contractual Scope of Work; evaluating performance; and certifying all invoices/vouchers for acceptance of the supplies or services furnished for payment.

(c) The COTR does not have the authority to alter the contractor's obligations under the contract, and/or modify any of the expressed terms, conditions, specifications, or cost of the agreement. If as a result of technical discussions it is desirable to alter/change contractual obligations or the Scope of Work, the Contracting Officer shall issue such changes.

(End of clause)

2852.211–70 Brand-name or equal.

As prescribed in 2811.104–70, insert the following clause:

BRAND-NAME OR EQUAL (JAN 1985)

(a) The terms ''bid'' and ''bidders'', as used in this clause, include the terms ''proposal'' and ''offerors''. The terms ''invitation for bids'' and ''invitational'', as used in their clause include the terms ''request for proposal'' and ''request''.

(b) If items called for by this invitation for bids have been identified in the schedule by a ''brand name or equal'' description, such identification is intended to be descriptive but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering ''equal'' products (including products of a brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics and requirements listed in the invitation.

(c) Unless the bidder clearly indicates in his/her bid that he/she is offering an ''equal'' product, his/her bid shall be considered as offering the brand name product referenced in the invitation for bids.

(d)(1) If the bidder proposes to furnish an ''equal'' product, the branch name, if any, of the product to be furnished shall be inserted in the space provided in the invitation for bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determinations to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or

identified in his/her bid as well as other information reasonably available to the purchasing activity. To ensure the sufficient information is available, the bidder must furnish as a part of his/her bid all description material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to: (i) determine whether the product offered meets the salient characteristics requirements of the invitation for bids, and (ii) established exactly what the bidder proposed to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the invitation for bids, he/she shall: (i) include in his/her bid a clear description of such proposed modification, and (ii) clearly mark any description material to show the proposed modifications.

(3) Modifications proposed after the bid opening to make a product conform to a brand name product referenced in the invitation for bids will not be considered.

(End of clause)

2852.223–70 Unsafe conditions due to the presence of hazardous material.

As prescribed in 2823.303–70, insert the following clause:

UNSAFE CONDITIONS DUE TO THE PRESENCE OF HAZARDOUS MATERIAL (JUN 1996)

(a) ''Unsafe condition'' as used in this clause means the actual or potential exposure of contractor or Government employees to a hazardous material as defined in Federal Standard No. 313, and any revisions thereto during the term of this contract, or any other material or working condition designated by the Contracting Officer's Technical Representative (COTR) as potentially hazardous and requiring safety controls.

(b) The Occupational Safety and Health Administration (OSHA) is responsible for issuing and administering regulations that require contractors to appraise its employees of all hazards to which they may be exposed in the course of their employment; proper conditions and precautions for safe use and exposure; and related symptoms and emergency treatment in the event of exposure.

(c) Prior to commencement of work, contractors are required to inspect for and report to the contracting officer or designee the presence of, or suspected presence of, any unsafe condition including asbestos or other hazardous materials or working conditions in areas in which they will be working.

(d) If during the performance of the work under this contract, the contractor or any of its employees, or subcontractor employees, discovers the existence of an unsafe condition, the contractor shall immediately notify the contracting officer, or designee, (with written notice provided not later than three (3) working days thereafter) of the existence of an unsafe condition. Such notice shall include the contractor's recommendations for the protection and the safety of Government, contractor and subcontractor personnel and property that may be exposed to the unsafe condition.

(e) When the Government receives notice of an unsafe condition from the contractor, the parties will agree on a course of action to mitigate the effects of that condition and, if necessary, the contract will be amended. Failure to agree on a course of action will constitute a dispute under the Disputes clause of this contract.

(f) Notice contained in this clause shall relieve the contractor or subcontractors from complying with applicable Federal, State, and local laws, codes, ordinances and regulations (including the obtaining of licenses and permits) in connection with hazardous material including but not limited to the use, disturbance, or disposal of such material.

(End of clause)

2852.233–70 Protests filed directly with the Department of Justice.

As prescribed in 2833.102(d), insert a clause substantially as follows:

PROTESTS FILED DIRECTLY WITH THE DEPARTMENT OF JUSTICE (JAN 1998)

(a) The following definitions apply in this provision:

(1) ''Agency Protest Official'' means the official, other than the contracting officer, designated to review and decide procurement protests filed with a contracting activity of the Department of Justice.

(2) ''Deciding Official'' means the person chosen by the protestor to decide the agency protest; it may be either the Contracting Officer or the Agency Protest Official.

(3) ''Interested Party'' means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(b) A protest filed directly with the Department of Justice must:

(1) Indicate that it is a protest to the agency.

(2) Be filed with the Contracting Officer.

(3) State whether the protestor chooses to have the Contracting Officer or the Agency Protest Official decide the protest. If the protestor is silent on this matter, the Contracting Officer will decide the protest.

(4) Indicate whether the protestor prefers to make an oral or written presentation of arguments in support of the protest to the deciding official.

(5) Include the information required by FAR 33.103(a)(2):

(i) Name, address, facsimile number and telephone number of the protestor.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protestor.

(iv) Copies of relevant documents.

(v) Request for a ruling by the agency.

(vi) Statement as to the form of relief requested.

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

(viii) All information establishing the timeliness of this protest.

(c) An interested party filing a protest with the Department of Justice has the choice of requesting either that the Contracting Officer or the Agency Protest Official decide the protest.

(d) The decision by the Agency Protest Official is an alternative to a decision by the Contracting Officer. The Agency Protest Official will not consider appeals from the Contracting Officer's decision on an agency protest.

(e) The deciding official must conduct a scheduling conference with the protestor within five (5) days after the protest is filed. The scheduling conference will establish deadlines for oral or written arguments in support of the agency protest and for many officials to present information in response to the protest issues. The deciding official may hear oral arguments in support of the agency protest at the same time as the scheduling conference, depending on availability of the necessary parties.

(f) Oral conferences may take place either by telephone or in person. Other parties may attend at the discretion of the deciding official.

(g) The protestor has only one opportunity to support or explain the substance of its protest. Department of Justice procedures do not provide for any discovery. The deciding official may request additional information from either the agency or the protestor. The deciding official will resolve the protest through informal presentations or meetings to the maximum extent practicable.

(h) An interested party may rerpresent itself or be represented by legal counsel. The Department of Justice will not reimburse the protester for any legal fees related to the agency protest.

(i) The Department of Justice will stay award or suspend contract Performance in accordance with FAR 33.103(f). The stay or suspension unless over-ridden, remains in effect until the protest is decided, dismissed, or withdrawn.

(j) The deciding official will make a best effort to issue a decision on the protest within twenty (20) days after the filing date. The decision may be oral or written.

(k) The Department of Justice may dismiss or stay proceeding on an agency protest if a protest on the same or similar basis is filed with a protest forum outside the Department of Justice.

(End of clause)

PARTS 2853–2899 [RESERVED]

FINDING AIDS

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2432.903 Revised 73531
2432.906 Revised 73531
2432.908 (c)(1), (2) and (3) redesignated as (c)(2), (3) and (4); new (c)(1) added; new (c)(2), (3) and (4) revised 73531
2437 Authority citation revised 73531
2437.110 Revised 73531
2439 Authority citation revised 73531
2439.107 (a) revised 73531
2442 Authority citation and heading revised 73532
2442.302-70 (Subpart 2442.3) Added 73532
2452 Authority citation revised 73532
2452.201–70 Redesignated from 2452.237–72; introductory text revised 73537
2452.204–70 Added 73532

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2452.215–70 Alternate III added 73533
2452.215–71 Added 73533
2452.215–72 Added 73533
2452.216–76 Revised 73533
2452.216–79 Added 73533
2452.216–80 Added 73533
2452.219–71 Added 73533
2452.219–72 Added 73534
2452.219–73 Added 73534
2452.219–74 Added 73534
2452.227–70 Added 73534
2452.232–70 Revised 73535
2452.232–71 Revised 73536
2452.232–72 Added 73536
2452.232–73 Added 73537
2452.237-70 Introductory text revised 73537
2452.237–72 Redesignated as 2452.201–70 73537
2452.237–73 Introductory text and (a) revised 73537
2452.237–75 Revised 73537
2452.237–77 Heading and introductory text revised; clause amended 73538
2452.239–70 Revised 73538

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1504.804-5 Amended 46289
1509.105 (Subpart 1509.1) Removed 46290
1511.011-70 Revised 46290
1511.011-73 Revised 46290
1511.011-74 (b) amended 46290
1511.011-80 Removed 46290
1516.405-272 Amended 46290
1516.406 (d) amended 46290
1522.103 (Subpart 1522.1) Removed 46290
1522.608 (Subpart 1522.6) Removed 46290
1523.7000—1523.7003 (Subpart 1523.70) Removed 46290
1528 Heading revised 46290
1528.101 (Subpart 1528.1) Redesignated as Subpart 1528.3 46290
1528.101 Redesignated as 1528.301; section amended 46290
1552.208-70 Revised 22797
1552.209-74 Alternate IV amended 46290
1552.211-70 Amended 46290
1552.211-72 (g) revised 46290

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1552.211-74 (c), Alternate I and II amended 46291
1552.211-76 Amended 46291
1552.211-77 Revised 46291
1552.211-79 (c) revised; (d) amended 46291
1552.211-80 Removed 46291
1552.215-72 (b) introductory text revised 46291
1552.216-78 Alternate I amended 46291
1552.223-70 (a) amended 46291
1552.223-72 (c) amended 46291
1552.228-70 Introductory text revised 46291
1552.232-70 (a), (e)(3) and Alternate I amended 46291
1552.232-74 Amended 46291
1552.233-70 Introductory text amended 46291
1552.237-70 (b), (c)(1) and (3) amended 46292
1552.237-71 (b) introductory text, (c) introductory text, (d), (e) introductory text and (g) amended 46292
1552.237-74 Introductory text and (a) amended 46292
1552.239-70 Removed 46292
1552.239-103 Removed 46292
1552.245-70 Clause amended 46292
1552.245-71 Clause amended 46292
Chapter 15 Appendix I removed 46292

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2409.470 Correctly revised 49698

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Chapter 15

1516.505 (a) revised 37960
1542.1500—1542.1504 (Subpart 1542.15) Removed 15924
1552.216-72 Revised 37960
1552.242-71 Removed 15924
1553.209 Removed 15924
1553.209-70 Removed 15924
1553.209-71 Removed 15924

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1803 Authority citation revised 43959

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1803.900—1803.970 (Subpart 1803.9) Added; interim 43959

1815.408-70 (c) added 10687

1816 Authority citation revised..... 43959

1816.307-70 (g) added; interim..... 43961

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1852 Authority citation revised..... 43959

1852.203-71 Added; interim..... 43961

(a) amended 51501

1852.215-85 Added 10688

1852.216-90 Added; interim..... 43961

Amended 51501