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# Title 48—Federal Acquisition Regulations System

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# SUBCHAPTER A—GENERAL

## PART 2900 [RESERVED]

## PART 2901—DEPARTMENT OF LABOR ACQUISITION REGULATION SYSTEM

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AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2901.0—Scope of Subpart

**2901.001 Scope of part.**

This chapter may be referred to as the Department of Labor Acquisition Regulation or the DOLAR. This subpart sets forth introductory information about the Department of Labor Acquisition Regulation. This subpart explains the relationship of the DOLAR to the Federal Acquisition Regulation (FAR) and explains the DOLAR's purpose, authority, applicability, exclusions, and issuance.

## Subpart 2901.1—Purpose, Authority, Issuance

**2901.101 Purpose.**

(a) Chapter 29, Department of Labor Acquisition Regulation, is established within Title 48 of the Federal Acquisition Regulation System of the Code of Federal Regulations.

(b) The purpose of the DOLAR is to implement the FAR, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The DOLAR is not by itself a complete document, as it must be used in conjunction with the FAR.

**2901.103 Authority.**

The DOLAR is issued pursuant to the authority of the Secretary of Labor under 5 U.S.C. 301 and 40 U.S.C. 486(c). This authority has been delegated to the Assistant Secretary for Administration and Management under Secretary's Order 4–76 in accordance with FAR 1.301(d)(3).

**2901.105–2 Arrangement of regulations.**

(a) *Numbering*. Where DOLAR implements the FAR, the implementing part, subpart, section or subsection of the DOLAR is numbered and captioned, to the extent feasible, the same as the FAR part, subpart, section or subsection being implemented, except that

the section or subsection being implemented is preceded with a 29 or a 290 such that there will always be four numbers to the left of the first decimal. For example, the DOLAR implementation of FAR 1.105–1 is shown as 2901.105–1 and the DOLAR implementation of FAR subpart 24.1 is shown as DOLAR subpart 2924.1. Material which supplements the FAR is assigned the subsection numbers 70 and up. For example, the DOL regulation governing appointment and termination of contracting officers' technical representatives is identified as 2901.603–71.

(b) References to FAR materials within the DOLAR will include the acronym FAR and the identifying number, for example, FAR 1.104–2(c)(2). References to DOLAR materials within the DOLAR simply cite the identifying number, for example, 2901.104–2(c)(2).

**2901.105–3 Copies.**

Copies of the DOLAR published in the FEDERAL REGISTER, CD-ROM, or Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, or from the Government Printing Office Web Page, *http://www.gpo.gov/*. Requests should reference the DOLAR as chapter 29 of title 48. The Code of Federal Regulations is printed in paperback edition with updates as needed. Additional information on DOL may be obtained on the Internet at *www.dol.gov*. Other DOL procurement policy documents referenced within the DOLAR may be available when appropriate by mail from the Division of Acquisition Management Services.

## Subpart 2901.2—Administration

**2901.201–1 Maintenance of the FAR.**

A member of the Division of Acquisition Management Services (DAMS), an organization within the Office of Acquisition and Management Support Services, the Business Operations Center, Office of the Assistant Secretary for Administration and Management (OASAM), represents the Department of Labor on the Civilian Agency Acquisition Council (CAAC). DAMS will be responsible for coordination with all interested DOL elements regarding proposed FAR revisions and advocating revisions sought by DOL.

## Subpart 2901.3—Agency Acquisition Regulations

**2901.302 Limitations.**

DOLAR System issuances are limited to published, codified, Department-wide regulations, which implement or supplement FAR policies and procedures and which affect organizations or individuals seeking to contract with the Department.

**2901.304 Agency control and compliance procedures.**

(a) The DOLAR is under the direct oversight and control of the Department's Senior Procurement Executive. Procedures for review and approval of issuances under the DOLAR System comply with FAR subparts 1.3 and 1.4. These procedures are contained in subpart 2901.6.

(b) DOLAR issuances shall comply with the restrictions in FAR 1.304(b).

(c) Heads of Contracting Activity (HCAs) must submit all proposed instructions and materials that implement or supplement the DOLAR to the Director, DAMS. In conjunction with the Office of the Solicitor, DAMS will review all issuances whether or not they will be published in the FEDERAL REGISTER as a part of the DOLAR System. In the case of internal procurement policy instructions, the purpose of the review is to ascertain that such instructions are consistent with the FAR and the DOLAR and that they do not contain information which should be issued under the DOLAR.

## Subpart 2901.4—Deviations From the FAR and DOLAR

**2901.403 Individual deviations from the FAR.**

(a) The Senior Procurement Executive is authorized to approve deviations from FAR provisions (see FAR 1.403) or DOLAR provisions, which affect only one contracting action, unless FAR 1.405(e) is applicable. Requests for deviations shall be submitted through the Director, DAMS.

(b) Requests for deviations under paragraph (a) of this section must be submitted by the HCA and include justification as to why the deviation is required.

(c) A copy of the approved deviation must be included in the contract file.

### 2901.404 Class deviations.

(a) The Senior Procurement Executive is authorized to approve class deviations from FAR or DOLAR provisions which affect more than one contracting action, unless FAR 1.405(e) is applicable. The request for deviation is submitted through the Director, DAMS.

(b) Requests for deviations under paragraph (a) of this section must be submitted by the HCA and include justification as to why the deviation is required and the number of contracting actions which will be affected.

(c) For a FAR class deviation the Director, DAMS will consult with the Chair of the CAAC, as required in FAR 1.404(a)(1), before authorizing the deviation.

(d) A copy of the approved class deviation must be included in each contract file.

(e) Recommended revisions to the FAR and a copy of each approved class FAR deviation will be transmitted to the FAR Secretariat by the Director, DAMS as required in FAR 1.404.

### 2901.405 Deviations pertaining to treaties and executive agreements.

(a) The Director, DAMS is responsible for transmitting to the FAR Secretariat the information required in FAR 1.405(d).

(b) For deviations not authorized by FAR 1.405(b) or (c), the Director, DAMS, will process the request for deviation through the FAR Secretariat.

## Subpart 2901.6—Career Development, Contracting Authority, and Responsibilities

### 2901.601 General.

(a) This section deals with contracting authority and responsibilities of the head of the agency as described in 2902.1, FAR subpart 1.6 and this subpart.

(1) The authority and responsibility vested in the Secretary to contract for authorized supplies and services is delegated to the Assistant Secretary for Administration and Management.

(2) The Assistant Secretary for Administration and Management may delegate contracting authority to a bureau or agency within the Department of Labor as he/she delineates in writing.

(b) The Assistant Secretary for Administration and Management, acting through the Senior Procurement Executive, may delegate additional procurement authority subject to the issuance of warrants by the Senior Procurement Executive, and reserves the right to rescind any acquisition authority, if it is determined that such action is in the best interest of the Government.

### 2901.602 Contracting officers.

### 2901.602–1 Authority.

Contracting warrants, at all levels above the micro-purchase threshold, must be requested by the HCA in writing and signed by the Senior Procurement Executive. Warrants may be accompanied by letters of appointment that may provide requirements for maintaining the warrant (e.g., maintaining current documentation for the FAR, DOLAR, and other guidance, and recurrent training). Copies of the appointment shall be maintained in the Division of Acquisition Management Services. Contracting officers must display the original warrant (and its limitations) in their workspace. A listing of current contracting officers may be available for review on the Internet at *http://www.dol.gov/oasam/grants/prgms.htm*. To modify a contracting officer's authority, the present appointment must be revoked and a new certificate issued.

### 2901.602–3 Ratification of unauthorized commitments.

(a) If the HCA agrees that the commitment appears to be without valid authorization, the Division of Acquisition Management Services must be notified by the HCA in accordance with the procedures outlined in this section.

(b) *Ratifications—Thresholds*. The Department of Labor may only ratify acquisitions that were intended to fulfill a bona fide need and otherwise could

have been authorized when made. If the action to be ratified is not approved, then the employee who authorized the work may be liable for the entire cost of the action. Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority must be processed as follows:

| Dollar threshold | Must be approved by (Ratifying official) | Steps to be followed |
|---|---|---|
| Below the micro-purchase threshold | Head of the Contracting Office | 1 through 5 & 7. |
| Between the micropurchase threshold and the Simplified Acquisition Threshold. | Head of Contracting Activity | 1 through 5 & 7. |
| Above the Simplified Acquisition Threshold | Assistant Secretary for Administration and Management, after review by the Procurement Review Board. | 1 through 7. |

NOTE: DOL procurement policies require review by the Procurement Review Board of advisory and assistance services acquisitions above $50,000 for competitive acquisitions and at any dollar amount for noncompetitive acquisitions, and waivers for contracts with employees and recently separated employees. Therefore, review by the PRB is required for unauthorized obligations at these lower thresholds.

*Step—Instruction*

(1) The individual is placed on notice by the contracting officer, in writing, that the purchase may be inappropriate because he did not have a purchasing request, funding, or authority to obligate the Government to make an expenditure of funds.

(i) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of the facts, including, but not limited to a statement as to why the acquisition office was not used, a description of work to be performed or products to be furnished, an estimated or agreed-upon contract price, citation of appropriation available, and a statement as to whether the contractor has commenced performance.

(ii) In the absence of such an individual, the head of the applicable office will be responsible for providing such information, including an explanation of why the individual who made the unauthorized commitment is unavailable to provide this information.

(2) The individual who made the unauthorized commitment or the head of the applicable office, as appropriate, shall provide a determination and finding (See FAR 1.704) to the contracting officer indicating that:

(i) Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;

(ii) A procurement request and/or accompanying documentation including a statement signed by the individual that explains why normal acquisition procedures were not followed, explains why the source was selected, lists other sources considered, describes the work, and estimates or states the agreed upon price. (If the DOL employee who made the unauthorized commitment is no longer available, appropriate program personnel must provide the information described in this paragraph); and

(iii) Funds are available and were available at the time of the unauthorized commitment.

(3) The contracting officer reviewing the unauthorized commitment shall determine whether the price is fair and reasonable and if payment is recommended to the ratifying official. (The contracting officer may rely upon written documentation submitted by managing staff above the individual who made the unauthorized commitment, in making his/her determination.)

(4) Legal review is required before ratification by the ratifying official.

(5) The ratifying official shall make an affirmative determination and finding that:

(i) The resulting purchase order or contract would otherwise have been proper if made by an appropriate contracting officer.

(ii) The contracting officer reviewing the unauthorized commitment has determined that the price is fair and reasonable and payment is recommended.

(6) For cases over the simplified acquisition threshold, all documentation for steps (1) through (5) must be forwarded to the Director, Division of Acquisition Management Services, for submission to the Procurement Review Board. However, the ratifying official is responsible for directing the receipt and acceptance for all products and deliverables received by the Government as a result of an unauthorized commitment.

(7) The supervisor of the individual who made the unauthorized commitment shall prepare a corrective action plan to preclude further unauthorized commitments (e.g., ethics, purchase card, or administrative procedures training, or other appropriate action). The ratifying official may approve the corrective action plan. The individual shall report to the ratifying official in writing when the corrective action has been initiated and again after it has been fully implemented.

### 2901.603 Selection, appointment, and termination of appointment.

#### 2901.603–1 General.

(a) The Senior Procurement Executive will develop and manage an acquisition career management program for contracting personnel. Training requirements must conform to Office of Federal Procurement Policy Letters 92–3, 97–01, and the Federal Acquisition Institute's curriculum. These references are available at:

*http://www.arnet.gov/Library/OFPP/PolicyLetters/Letters/PL97–01.html*, *http://www.arnet.gov/Library/OFPP/PolicyLetters/Letters/PL92–3.html*, and through the Federal Acquisition Institute (FAI) at: *http://www.faionline.com/fai/campus/index4.htm*.

(b) The program must cover all contracting personnel in the following categories:

(1) *General Schedule (GS–1102) Contracting Series* (See also FAR 1.603);

(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 Technical Representatives as identified in 2901.603–71.

#### 2901.603–3 Appointment.

*General*. In accordance with FAR 1.603–3, appointments will be made in writing on an SF 1402 for all warrants above the micro-purchase threshold. In addition, appointments may be made for specific functions unrelated to dollar threshold, such as indirect cost negotiation, debt management, and closeout functions.

(a) *Purchase Cards (micro-purchase threshold)*. Purchase cardholders will be appointed in accordance with the DOL Guidelines for Purchase Card Use and the Agency/Office procedures approved by the HCA. Agency/Organization Purchase Card Coordinators requesting issuance of a purchase card must be responsible for ensuring that the purchase cardholder has taken an orientation course before issuance and/or use of the purchase card. A list of purchase cardholders is available at: *http://www.dol.gov/oasam/foia/hotfoia/citibanklist.htm*.

(b) *Simplified Acquisition Threshold (currently $100,000)*. The HCA may request a delegation of procurement authority not to exceed the simplified acquisition threshold based on education, training, and experience in the acquisition field. Effective July 26, 2004, all new appointments must comply with training requirements listed in ''OFPP Policy Letter No. 92–3, Procurement Professionalism Program Policy-Training for Contracting Personnel'', dated June 24, 1992.

(c) *$500,000*. The HCA may request a delegation of procurement authority not to exceed $500,000 based on the individual's education, training and experience in contracting. Although primarily reserved for those in the GS–1102 series, the HCA may consider business acumen, education, training, and experience. Effective May 27, 2004, all new appointments must comply with training requirements listed in ''OFPP Policy Letter No. 92–3, Procurement Professionalism Program Policy-Training for Contracting Personnel'', dated June 24, 1992.

(d) *Unlimited*. The HCA may request a delegation of procurement authority on an unlimited basis for individuals whose education, training, and experience in contracting warrant such authority. Although primarily reserved for those in the GS–1102 series, the HCA may consider length of service, training, and experience. Effective May 27, 2004, all new appointments must comply with training requirements listed in ''OFPP Policy Letter No. 92–3, Procurement Professionalism Program Policy-Training for Contracting Personnel'', dated June 24, 1992.

**2901.603–4 Terminations.**

Termination of a contracting officer's appointment will be made in writing unless the warrant contains the basis for the termination (i.e., retirement, reassignment). Terminations may be immediate, but must not operate retroactively.

**2901.603–70 Responsibility of other government personnel.**

(a) Only DOL personnel with contracting authority shall obligate DOL to any type of contractual obligation and only to the extent of their delegated authority. Responsibility for determining how to buy, the conduct of the buying process, and execution of the contract rests with the contracting officer.

(b) Personnel responsible for determining agency needs should maintain a close and continuous relationship with their contracting officer to ensure that acquisition personnel are made aware of contemplated acquisition actions. This will be mutually beneficial in terms of better planning for acquisition action and more timely, efficient and economical acquisition.

(c) Personnel not delegated contracting authority or insufficient contracting authority may not commit the Government, formally or informally, to any type of contractual obligation. However, DOL personnel who must use the contracting process to accomplish their programs must support the contracting officer to ensure that:

(1) Requirements are clearly defined and specified without being overly restrictive in accordance with FAR 11.002;

(2) Competitive sources are solicited, evaluated, and selected as appropriate;

(3) The FAR and the Competition in Contracting Act requirements for full and open competition are satisfied to the maximum extent practicable. Sole source purchases may only be permitted in accordance with FAR Subpart 6.3 or other applicable provisions of the FAR (e.g. FAR part 8) or federal law;

(4) Quality standards are prescribed, and met;

(5) Performance or delivery is timely;

(6) Files are documented to substantiate the judgments, decisions, and actions taken, including compliance with paragraphs (c)(2) and (3) of this section;

(7) Requirements are written so as to encourage competition and to comply with regulations and federal policy for meeting acquisition goals such as performance-based contracting, HUBZone contractors, etc. The contracting officer will identify these programs to the program office.

**2901.603–71 Contracting Officer's Technical Representatives (COTR).**

(a) At the time a COTR is to become responsible for a contract, task order, or delivery order, the contracting officer must issue a written letter of delegation informing the individual by name of his or her authority, including a delineation of applicable limitations and responsibilities. This applies to contracts awarded by the Department of Labor and those awarded by other agencies, such as Federal Supply Schedule Contracts or Economy Act transactions. Only the contracting officer cognizant of the contract action may make a COTR delegation. However, a contracting officer at any level above the cognizant contracting officer may sign the delegation letter, following his or her determination of its accuracy, completeness, and sufficiency.

(b) The functions of a COTR typically may include such actions as inspecting, testing, and accepting contract line items, monitoring the contractor's performance, controlling Government-furnished property, reviewing and approving and/or recommending to the contracting officer approval/disapproval of vouchers/invoices, etc. An individual

COTR may have only the duties specifically identified in a written delegation to him or her by name (i.e., COTR duties may not be delegated to a position) and has no authority to exceed them.

(c) Contracting officers may not delegate to the COTR the following authorities:

(1) The authority to issue task or delivery orders against a contract or any of the agreements defined under FAR 16.7;

(2) The authority to change any of the terms and conditions of a contract or any of the agreements defined under FAR 16.7;

(3) The authority to sign contracts or contract modifications;

(4) The authority to write letters to the contractor that will affect the cost or schedule of the contract. The authority to otherwise write letters to a contractor must require the COTR to send a copy of the letters to the contracting officer for the contract file;

(5) The authority to approve contractors' final invoices under cost-reimbursement contracts. However, the COTR must make a final payment recommendation to the contracting officer; or

(6) The authority to commit the Government to any adjustments to the price or cost of the contract or order (e.g., the contracting officer must sign all pre-negotiation and price negotiation memoranda including those which may be combined into one document for those adjustments valued at $100,000 or less).

(d) The contracting officer's delegation must include the admonition that the COTR may be personally liable for unauthorized commitments. Contracting officer authority to sign or authorize contractual instruments must not be delegated through a COTR designation or by any means other than a contracting officer warrant.

(e) The contractor must be notified of the COTR designation in writing and a copy of the COTR letter of appointment also must be provided to the contractor. The contracting officer must provide the COTR with a copy of the COTR designation notification that was sent to the contractor.

(f) The letter delegating COTR authority must include the contract number, and must include the following information, at a minimum:

(1) Contracting officer's and contract specialist's/administrator's name and telephone number;

(2) COTR's specific authority and responsibilities;

(3) COTR's specific limitations, including the admonition that the COTR may be personally liable for unauthorized commitments;

(4) Detailed description of the types of files and the content of the files to be maintained by the COTR;

(5) Reference to meeting applicable requirements for ethics, procurement integrity, no conflict of interest, and proper standards of conduct, including a copy of FAR part 3, and other regulations, statutes, or directives governing these topics (e.g., 5 CFR part 2635 Standards of Conduct);

(6) A requirement that the COTR acknowledge receipt and acceptance of the letter and return it to the contracting officer;

(7) A description of the training required and information on obtaining such training.

(g) *Applicability*. The eligibility requirements of this subpart must apply to all individuals who are designated by the contracting officer as COTRs.

(h) *Eligibility standards*. To be determined eligible for an appointment as a DOL 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 of training specifically in procurement ethics, either through courses offered periodically by the Department of Labor, another federal agency's program, or a commercial vendor.

(i) *Limitations*. Effective May 27, 2004, each COTR appointment made by the contracting officer must 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.

(j) *Termination*. (1) Termination of the COTR's appointment must be made in writing by a contracting officer and must give the effective date of the termination. The contracting officer must 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.

(2) COTRs may be terminated for reasons (not an exhaustive listing) such as exceeding their authorities and limitations, conflicts of interest, unethical conduct, failure to perform, reassignment/resignation/retirement, and upon completion of the contract to which assigned.

(k) *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 HCA may waive the training requirements and authorize the individual to perform the COTR duties.

### 2901.603–72 Administrative procurement management reviews.

(a) The Senior Procurement Executive is responsible for performing administrative procurement reviews for each procurement office in the Department of Labor, except the Office of the Inspector General (OIG). The purpose of these reviews is to audit internal controls to ensure compliance with established procurement law, regulations, policies, procedures and applicable directives. The reviews are to emphasize the development and improvement of managerial controls and best practices.

(b) The administrative procurement review system is a three-pronged approach that includes self-assessment, statistical data for validation, and flexible quality reviews and assessment techniques. This system is required to:

(1) Evaluate the effectiveness and efficiency of office acquisition systems;

(2) Assess the adequacy of policies, procedures and regulations governing the acquisition process; and

(3) Identify and implement changes necessary to improve the systems.

(c) The Senior Procurement Executive shall establish procurement review procedures, which will focus on:

(1) Conformance with policies of the FAR, DOLAR and the Department of Labor Manual Series 2–800 and 2–900.

(2) Conformance with federal reporting requirements for the Department of Labor.

(3) Understanding of new department-wide or government-wide initiatives (e.g., E-Procurement).

(4) Government-wide procedures established by the Office of Management and Budget.

(d) HCAs are responsible for ensuring contracting activity compliance with law and regulations through the review and oversight process.

## Subpart 2901.7—Determinations and Findings

### 2901.707 Signatory authority.

A class justification for other than full and open competition must be approved in writing by the same approval authority as for individual justifications in accordance with FAR 6.304(a). The approval level must be determined by the estimated total value of the class.

# PART 2902—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

## Subpart 2.1—Definitions

### 2902.101 Definitions.

(a) Commonly used words and terms are defined in FAR subpart 2.1. This part 2902 gives DOL-specific meanings for some of these words and terms and

defines other words and terms commonly used in the DOL acquisition process.

(b) The following words and terms are used as defined in this subpart unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular part or portion of a part:

*Competition Advocate* The Competition Advocate for the Department of Labor is appointed by the Assistant Secretary for Administration and Management and is defined in FAR 6.5 and 2906.5. If the appointee is recused from a procurement action, the Assistant Secretary for Administration and Management may designate another official to act in that capacity.

*Contracting Activity* means an agency or component office within the Department of Labor with specific responsibility for managing contract functions pursuant to one or more warrants signed by the Senior Procurement Executive (or the Office of the Inspector General for its contracting activity).

*Contracting Officer's Technical Representative* means the individual appointed by the contracting officer to represent the Department of Labor's programmatic interests on a Department of Labor contract, task order, or delivery order. This individual is responsible to the contracting officer for overseeing receipt and acceptance of goods/services by the Government, reporting on the contractor's performance, and approving/disapproving payment to the contractor. Authority is otherwise limited to giving technical direction to the contractor within the framework of the contract (see 2901.603–71). This position may go by other titles, such as: a technical point of contact (TPOC) or Contacting Officer's Representative (COR).

*Head of Agency* (also called agency head), for the FAR and DOLAR only, means the Assistant Secretary for Administration and Management; except that the Secretary of Labor is the Head of Agency for acquisition actions, which by the terms of a statute or delegation must be performed specifically by the Secretary of Labor; the Inspector General is the Head of Agency in all cases for the Office of the Inspector General. Authority to act as the Head of Agency has been delegated to the Assistant Secretary for Employment and Training and the Assistant Secretary for Mine Safety and Health for their respective agencies. For purposes of the Economy Act (determinations and interagency agreements under FAR 17.5) only, the Employee Benefits Security Administration, Employment Standards Administration, Women's Bureau, Office of the Solicitor, Bureau of Labor Statistics, Office of Disability Employment Policy, and the Occupational Safety and Health Administration are delegated contracting authority.

*Head of Contracting Activity* (HCA) means the official who has overall responsibility for managing the contracting activity, when the contracting activity has more than one person with a warrant issued by the Senior Procurement Executive. In the Department of Labor the following officials are the HCA for their respective organization:

(i) For the Mine Safety and Health Administration, the Director, Administration and Management, MSHA.

(ii) For the Employment and Training Administration, the Director, Office of Grants and Contract Management, ETA.

(iii) For the Office of the Inspector General, the Director, Division of Finance and Administration, OIG.

(iv) For the Bureau of Labor Statistics, the Director, Division of Administrative Services, BLS.

(v) For the Office of the Assistant Secretary for Administration and Management and all other agencies not listed in this definition, the Director, Business Operations Center, OASAM.

*Senior Procurement Executive* means the Deputy Assistant Secretary for Administration and Management as defined at FAR 2.101.

[69 FR 22991, Apr. 27, 2004]

# PART 2903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

## Subpart 2903.1—Safeguards

Sec.
2903.101 Standards of conduct.
2903.101–1 General.

2903.104 Procurement integrity.
2903.104–3 Definitions.
2903.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.
2903.104–7 Violations or possible violations of standards of conduct.

### Subpart 2903.2—Contractor Gratuities to Government Personnel

2903.203 Reporting suspected violations of the Gratuities clause.
2903.204 Treatment of violations.

### Subpart 2903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2903.601 Policy.
2903.602 Exceptions.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2903.1—Safeguards

### 2903.101 Standards of conduct.

#### 2903.101–1 General.

The statutory prohibitions and their application to DOL personnel are discussed in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635 and the supplemental DOL standards of conduct, 5 CFR part 5201. All DOL personnel involved in acquisitions must become familiar with these statutory prohibitions. Any questions concerning them must be referred to an Agency Ethics Official in the Office of the Solicitor. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. 218). Any suspected violations must be reported promptly to the Office of the Inspector General.

### 2903.104 Procurement integrity.

#### 2903.104–3 Definitions.

*Agency ethics official* means the Solicitor or the Associate Solicitor for Legislation and Legal Counsel.

#### 2903.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) Government employees serving in the following positions are authorized access to proprietary or source selection information, but only to the extent necessary to perform their official duties:

(1) Personnel participating in technical evaluation panels (i.e., source selection board) or personnel evaluating an offeror's or bidder's technical or cost proposal under other competitive procedures, and personnel evaluating protests.

(2) Personnel assigned to the contracting office.

(3) The initiator of the procurement request (to include the official having principal technical cognizance over the requirement).

(4) Small business specialists.

(5) Personnel assigned to the Office of the Solicitor.

(6) Personnel assigned to the Department of Labor's Division of Cost Determination and the Defense Contract Audit Agency.

(7) Personnel assigned to the Division of Acquisition Management Services.

(8) Members of the Procurement Review Board.

(9) The Office of the Inspector General.

(10) Other Government employees authorized by the contracting officer.

(11) Supervisors, at any level, of the personnel listed in this paragraph (a).

(b) The originator of information that may be source selection information must consult with the contracting officer or the procurement officer, who must determine whether the information is source selection information. DOL personnel responsible for preparing source selection information as defined in FAR 2.101 must assure that the material is marked with the legend in FAR 3.104–4 at the time the material is prepared.

(c) Unless marked with the legend ''SOURCE SELECTION INFORMATION—SEE FAR 3.104–4,'' draft specifications, purchase descriptions, and statements of work could erroneously be released during a market survey in order to determine the capabilities of

potential competitive sources (see FAR 7.1 and FAR 10).

**2903.104–7 Violations or possible violations of standards of conduct.**

(a) The Senior Procurement Executive is the individual designated to receive the contracting officer's report of violations.

(b) The HCA or designee must refer all information describing an actual or possible violation to the Associate Solicitor for Legislation and Legal Counsel, the Senior Procurement Executive, and Inspector General staff.

## Subpart 2903.2—Contractor Gratuities to Government Personnel

**2903.203 Reporting suspected violations of the Gratuities clause.**

Contractor gratuities offered to Government personnel are subject to the restriction under the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635.

**2903.204 Treatment of violations.**

Any suspected violations of FAR subpart 3.2 and the clause at FAR 52.203–3, Gratuities, must be reported to the Office of the Inspector General. The authority to determine whether a violation of the Gratuities clause by the contractor, its agent, or another representative, has occurred and the appropriate remedies are delegated to the HCA.

## Subpart 2903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

**2903.601 Policy.**

In addition to restrictions placed on current Federal government employees, 18 U.S.C. 207 places some restrictions on contracting with former officers, employees, and elected officials of the executive and legislative branches. Under these prohibitions, contracts with former employees are prohibited for a period of one year from the date of severance of duties, unless an exception is granted as set forth in 2903.602.

**2903.602 Exceptions.**

(a) In accordance with FAR 3.602, only when there is a most compelling reason to do so, is the Assistant Secretary for Administration and Management authorized to except a contract from the policy in FAR 3.601, after the Procurement Review Board and the agency ethics official have reviewed and recommended approval of the exception. However, when time does not permit, the Assistant Secretary for Administration and Management may unilaterally approve an exception. The exception and information supporting the exception must be provided to the contracting officer for their official records.

(b) When an exception under this subpart is requested, it is submitted through the director of the cognizant program office to the HCA. In the procurement request, the director must describe the basis for the exception from the restrictions of FAR 3.601.

(c) Except as allowed in paragraph (a) of this section, the Department of Labor may enter into a negotiated contract or an amendment to an existing contract with former employees of DOL within one year of separation (or with firms in which former employees are known to have a substantial interest) only after review and recommendation for approval by the agency ethics official, the Procurement Review Board, and written approval by the Assistant Secretary for Administration and Management.

(d) Approval of a decision to grant an exception as provided in this section must be documented by a written findings and determination prepared by the requesting official for signature by the Assistant Secretary for Administration and Management. The determination and findings must document compliance with FAR 3.603, FAR 9.5 and DOLAR 2909.5; specify the compelling reason(s) for award; and be placed in the contract files and the files of the Policy Review Board.

# PART 2904—ADMINISTRATIVE MATTERS

## Subpart 2904.8—Government Contract Files

Sec.
2904.800–70 Contents of contract files.
APPENDIX A TO PART 2904

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

## Subpart 2904.8—Government Contract Files

### 2904.800–70 Contents of contract files.

(a) The reports listed in appendix A to this part are applicable to the Department of Labor.

(b) HCAs must be responsible for establishing standard contract files for their contracting activities. The HCA must provide one or more representative contract files to the Director, Division of Acquisition Management Services, as requested for comment.

APPENDIX A TO PART 2904

| Title of report | Reference | Date due | Submitted to |
|---|---|---|---|
| Report of Proposed Federal Construction*. | 29 CFR 1.4 | Annually; 20–Aug | ESA Davis Bacon. |
| Contractor Report of Government Property*. | FAR Chapter 45; | Annually; 31–Oct | Business Operations Center. |
| Major Preference Program Goals and Achievements Report*. | DLMS 2 1000 | By the 20th of each month | Office of Small Business Programs. |
| A–76 & FAIR Act Inventory | FAIR ACT & OMB MEMO | June 30th of each year | Office of Competitive Sourcing. |
| SF 294, Subcontracting Report for Individual Contracts. | FAR Subpart 19.7; | Semi-annually; | Contracting Officer. |
| | SF 294 | April 30; 30–Oct | Office of Small Business Programs. |
| SF 295, Summary Subcontract Report. | FAR Subpart 19.7; | Semi-annually March 30; September 30. | Contracting Officer. |
| Value Engineering Report* | OMB Circular A–131 | Annually; 7–Dec | Office of Acquisition and Management Support Services. |
| Report on Federal Support to Universities, Colleges, and Nonprofit Institutions. | Section 3(a)(7) of the National Science Foundation (NSF) Act. | Annually; O/A 15–May | Upon request From National Science Foundation. |
| Procurement Forecast Initial and Update. | Pub. L. 100–656; | Sept 15 (Init.) and Apr 15 (Update). | Division of Acquisition Management Services. |

For those reports with an (*), if there was no activity for the period being reported, a negative response for the period must be submitted to the requisitioning office.

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# SUBCHAPTER B—ACQUISITION PLANNING

## PART 2905—PUBLICIZING CONTRACT ACTIONS

### Subpart 2905.1—Dissemination of Information

Sec.
2905.101 Methods of disseminating information.

### Subpart 2905.2—Synopsis of Proposed Contract Actions

2905.202 Exceptions.

### Subpart 2905.4—Release of Information

2905.402 General public.
2905.403 Requests from Members of Congress.
2905.404 Release procedures.

### Subpart 2905.5—Paid Advertisements

2905.501 Scope.
2905.502 Authority.
2905.503 Procedures.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2905.1—Dissemination of Information

**2905.101 Methods of disseminating information.**

Contracting officers may only use the Government Point of Entry (GPE) for synopsis and dissemination of information concerning procurement actions. The Division of Acquisition Management Services manages the DOL account.

## Subpart 2905.2—Synopsis of Proposed Contract Actions

**2905.202 Exceptions.**

The Assistant Secretary for Administration and Management is authorized to make the determination prescribed in FAR 5.202(b). A written determination documenting the reasons why advance notice is not appropriate or reasonable must be submitted by the HCA for appropriate action including communication with the officials listed in FAR 5.202(b).

## Subpart 2905.4—Release Of Information

**2905.402 General public.**

(a) Unless the HCA determines that disclosure would be prejudicial to the interests of DOL, if a list of interested parties is collected in reference to a solicitation, it may be released upon request.

(b) Any request for release of information is subject to the Freedom of Information Act and FAR 24.2.

**2905.403 Requests from Members of Congress.**

All proposed responses to Congressional inquiries must be prepared and forwarded for coordination with the Office of the Solicitor and the Office of Congressional and Intergovernmental Affairs to determine whether circumstances exist that will allow the release of additional information. In such instances, the Congressional requestor must be furnished an interim reply providing the information that is releasable. The interim reply must describe the problem that precludes release of any requested materials and describe generally what steps, if any, are being taken to make such information available.

**2905.404 Release procedures.**

HCAs are authorized to release long-range acquisition estimates under the conditions in FAR 5.404–1.

## Subpart 2905.5—Paid Advertisements

**2905.501 Scope.**

This subpart provides policies and procedures for the procurement of paid advertising as covered by 5 U.S.C. 302, and 44 U.S.C. 3701, 3702, and 3703.

**2905.502 Authority.**

When it is deemed necessary to use paid advertisements in newspapers and trade journals, written authority for

such publication may be obtained from the HCA or designee.

**2905.503 Procedures.**

(a) Prior to obtaining HCA approval, an agency should seek legal review to determine whether it has appropriate legal authority for advertising. The HCA exercising the authority delegated by 2905.502 must do so in accordance with the procedures set forth in FAR 5.503 and those in this section.

(b) Requests for procurement of advertising must 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.

# PART 2906—COMPETITION REQUIREMENTS

## Subpart 2906.3—Other Than Full and Open Competition

Sec.
2906.301 Policy.
2906.303 Justifications.

## Subpart 2906.5—Competition Advocates

2906.501 Requirement.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2906.3—Other Than Full and Open Competition

**2906.301 Policy.**

(a) Department of Labor acquisitions must comply with the Department of Labor Manual Series (DLMS) 2, Chapter 830 (available by mail from the Director, Division of Acquisition Management Services, 200 Constitution Ave., NW., Washington, DC 20210–0001), or electronically from *http://www.dol.gov/oasam/programs/boc/prb.htm*. Any proposed noncompetitive acquisition in excess of the simplified acquisition threshold must be fully justified and, if required by the DLMS, submitted to the DOL Procurement Review Board and approved by the Assistant Secretary for Administration and Management and, in the case of research and development contracts, also by the Assistant Secretary for Policy.

(b) With the exception of contracts for advisory and assistance services or for research and development, the contracting officer has the authority below the simplified acquisition threshold to approve sole source contracts. The contracting officer is responsible for assuring that proposed acquisitions below the simplified acquisition threshold are in compliance with FAR and DOLAR requirements regarding competition.

**2906.303 Justifications.**

The authority of the agency head to determine that only specified make and models of technical equipment will satisfy the agency's need under FAR 6.302–1 is delegated to the HCA.

## Subpart 2906.5—Competition Advocate

**2906.501 Requirement.**

The Assistant Secretary for Administration and Management must appoint a Competition Advocate for the Department of Labor. The appointment will be predicated on an understanding of the competition requirements in the FAR, and particularly small business programs.

# PART 2907—ACQUISITION PLANNING

## Subpart 2907.1—Acquisition Plans

Sec.
2907.105 Contents of written acquisition plans.
2907.107 Additional requirements for acquisitions involving bundling.

## Subpart 2907.3—Contractor Versus Government Performance

02907.300 Availability of inventory.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2907.1—Acquisition Plans

### 2907.105 Contents of written acquisition plans.

The Department of Labor has implemented its acquisition planning system in compliance with FAR 7.1 and internal procedures provided in DLMS 2 section 834. The annual forecast is available for review from: *http://www.apps.dol.gov/contract_grant/index.htm*.

### 2907.107 Additional requirements for acquisitions involving bundling.

The FAR requirements for justification, review, and approval of bundling of contract requirements also apply to an order from a Federal Supply Schedule contract, Governmentwide acquisition contracts, or other indefinite-delivery contracts if the requirements consolidated under the order meet the definition of ''bundling'' at FAR 2.101.

## Subpart 2907.3—Contractor Versus Government Performance

### 2907.300 Availability of inventory.

The Department of Labor's FAIR Act inventory of commercial activities performed by federal employees and inherently governmental functions may be accessed on the Internet at: *www.dol.gov* under ''Doing Business with DOL''.

# PART 2908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

## Subpart 2908.4—Federal Supply Schedules

Sec.
2908.404 Using schedules.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

## Subpart 2908.4—Federal Supply Schedules

### 2908.404 Using schedules.

Small business considerations, procedures regarding both prime and subcontracting, and clearances specified in DOLAR 2919 apply to GSA Federal Supply Schedule Orders above the simplified acquisition threshold. Procedures to be followed may be modified by the Office of Small Business Program as appropriate in order to comply with GSA Federal Supply Schedule procedures (e.g., first tier contracts may be required to report their commercial subcontracting goals to the DOL Office of Small Business Programs).

[69 FR 22991, Apr. 27, 2004]

# PART 2909—CONTRACTOR QUALIFICATIONS

## Subpart 2909.1—Responsible Prospective Contractors

Sec.
2909.105 Procedures.

## Subpart 2909.4—Debarment, Suspension, And Ineligibility

2909.402 Policy.
2909.405 Effect of listing.
2909.405–1 Continuation of current contracts.
2909.406 Debarment.
2909.406–1 General.
2909.406–3 Procedures.
2906.407 Suspension.
2909.407–1 General.

## Subpart 2909.5—Organizational and Consultant Conflicts of Interest

2909.503 Waiver.
2909.506 Procedures.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2909.1—Responsible Prospective Contractors

### 2909.105 Procedures.

Before awarding a contract, the contracting officer must make a written determination of the otherwise successful bidder's/offeror's responsibility in accordance with FAR 9.105. In addition to past performance information, the contracting officer must insure that the proposed contractor, and any subcontractor representing more than $25,000 in goods or services, does not appear in the ''List of Parties Excluded from Federal Procurement'' (available on the Internet at *www.epls.gov*). In addition, contracting officers should base

their determination of contractor responsibility on a review of the company's ''Summary or Financial Report'' from Dun & Bradstreet (available on the Internet for a fee at *http://www.dnb.com/*).

## Subpart 2909.4—Debarment, Suspension, and Ineligibility

**2909.402 Policy.**

(a) This subpart prescribes DOL policies and procedures governing the debarment and suspension of contractors, the listing of debarred and suspended contractors, contractors declared ineligible (see FAR 9.403) and distribution of the list. This subpart does not apply to Department of Labor debarments or suspensions issued for Davis-Bacon Act and Davis-Bacon Related Act violations, Service Contract Act violations, Affirmative Action/Equal Employment Opportunity violations, or violations under other statutes administered by the Department of Labor.

(b) *Contracting activity officials shall have the following responsibilities.* (1) Heads of contracting activity (HCA) shall:

(i) Provide an effective system to ensure that contracting staffs consult the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'' at *http://epls.arnet.gov/* before soliciting offers, awarding or extending contracts, or consenting to subcontract.

(ii) Consider debarment or suspension of a contractor when cause, as defined under FAR 9.406–2 for debarment and FAR 9.407–2 for suspension, is shown. Contracting officers should consult with their appropriate legal counsel before 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 is subject to reconsideration if warranted by new information.

(iii) When the decision is made to initiate debarment and/or suspension of a contractor, the Senior Procurement Executive must prepare a notice in accordance with FAR 9.406–3(c) or FAR 9.407–3(c). The draft notice, along with the administrative file containing all relevant facts and analysis, must be forwarded to the Senior Procurement Executive, as the debarring and suspending official, following review by the activity's legal counsel.

(2) The Senior Procurement Executive shall:

(i) Review the notice and administrative file for sufficiency and provide for review by other DOL officials as considered appropriate;

(ii) In accordance with FAR 9.406–3(c) or FAR 9.407–3(c), if it is determined that action is warranted, give the contractor prompt notice of the proposed debarment or suspension;

(iii) Direct additional fact-finding as necessary when material facts are in dispute;

(iv) Notify the contractor and any affiliates involved 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);

(v) Be responsible for accomplishing the actions required in FAR 9.404(c) within five working days after debarring or suspending a contractor or modifying or rescinding such an action;

(vi) Maintain Department-wide records of debarred or suspended contractors in accordance with FAR 9.404.

**2909.405 Effect of listing.**

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies must not solicit offers from, award contracts to, or consent to subcontract with these organizations, unless the HCA determines in writing that there is a compelling reason for such action and the Assistant Secretary for Administration and Management approves such determinations.

(b) Bids received from any listed contractor in response to an invitation for bids must 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 Assistant Secretary for Administration and Management 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 Assistant Secretary for Administration and Management approves such action.

**2909.405–1 Continuation of current contracts.**

(a) At the time an option is being exercised, contracting officers must review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. If a contractor or significant subcontractor is identified in the listing, the contracting officer must make a written determination either to proceed or to terminate the contract, and must explain the rationale for the decision. In accordance with FAR 9.405–1, contracting officers 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. The contracting officer must make such determination in writing, after consulting with the contracting officer's technical representative and legal counsel. The determination must be approved by the HCA.

(b) Contracting activities must 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 Assistant Secretary for Administration and Management approves such action.

**2909.406 Debarment.**

**2909.406–1 General.**

(a) The Senior Procurement Executive is the debarring official for DOL and is authorized to debar a contractor for any of the causes in FAR 9.406–2, using the procedures in 2909.406–3.

(b) The Senior Procurement Executive is authorized to make an exception regarding debarment by another agency debarring official in accordance with the conditions in FAR 9.406–1(c).

**2909.406–3 Procedures.**

(a) *Investigation and referral.* Whenever a DOL employee knows a cause for debarment, as listed in FAR 9.406–2, the appropriate HCA affected must be notified. The contracting officer must consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation documenting the cause for debarment to the Senior Procurement Executive.

(b) *Notice of proposal to debar.* Based upon review of the recommendation to debar and consultation with the Office of the Solicitor and Office of the Inspector General, as appropriate, the Senior Procurement Executive must initiate proposed debarment by taking the actions listed in FAR 9.406–3(c) and advising the contractor of DOL's rules under 2909.4.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.406–3(b)(2), the Senior Procurement Executive must afford the contractor the opportunity to appear at an informal fact-finding proceeding as required by FAR 9.406–3(b)(2)(i). The proceeding must be conducted by the Office of Administrative Law Judges and must be held at a date and location reasonably convenient to the parties concerned. Subject to the provisions of 29 CFR part 18, entitled ''Rules Of Practice And Procedure For Administrative Hearings Before The Office Of Administrative Law Judges'', the contractor and any specifically named affiliates, may be represented by counsel or any duly authorized representative. Either party may call witnesses. The proceedings must be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the proposed debarment. A transcript of the proceedings must be made available to the contractor under the conditions in FAR 9.406–3(b)(2)(ii).

(d) *Decision and notice.* The Senior Procurement Executive shall make a decision on imposing debarment in accordance with the procedures in FAR 9.406–3(d), findings of fact of the Administrative Law Judge, and the conditions in FAR 9.406–4 and 9.406–5. Notice of the decision must be provided to the contractor and any affiliates involved

in accordance with the procedures in FAR 9.406–3(e).

**2909.407 Suspension.**

(a) The Senior Procurement Executive is the suspending official for DOL and is authorized to suspend a contractor for any of the causes in FAR 9.407–2, using the procedures in 2909.406–3.

(b) The Senior Procurement Executive is authorized to make an exception, regarding suspension by another agency suspending official under the conditions in FAR 9.407–1(d).

**2909.407–1 General.**

(a) *Investigation and referral.* Whenever a DOL employee knows of a cause for suspension, as listed in FAR 9.407–2, the appropriate HCA affected must be notified. The HCA must consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation documenting the cause for suspension, to the Senior Procurement Executive.

(b) *Notice of suspension.* Based upon review of the recommendation to suspend and consultation with the Office of the Solicitor and the Office of the Inspector General, as required, the Senior Procurement Executive will initiate suspension by taking the actions listed in FAR 9.407–3(c) and advising the contractor of DOL's rules under this subpart.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.407–3(b)(2), the Senior Procurement Executive must afford the contractor the opportunity to appear at informal proceedings, as required by FAR 9.407–3(b)(2)(i). Either party may call witnesses. The proceedings must be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the proposed suspension.

(d) *Suspension decisions.* The Senior Procurement Executive must make a final decision on suspension as prescribed in FAR 9.407–3(d). Notice of the decision must be provided to the contractor and any affiliates involved, in accordance with the provisions in FAR 9.407–3(d)(4).

## Subpart 2909.5—Organizational and Consultant Conflicts of Interest

**2909.503 Waiver.**

(a) The Senior Procurement Executive is delegated authority by the Assistant Secretary for Administration and Management to waive any general rule or procedure in FAR 9.5 when its application in a particular situation would not be in the Government's best interest.

(b) Requests for waivers must be made by the HCA to the PE. Each request must include:

(1) An analysis of the facts involving the potential or actual conflict including benefits and detriments to the Government and prospective contractors;

(2) A discussion of the factors which preclude avoiding, neutralizing, or mitigating the conflict; and

(3) Identification of the provision(s) in FAR 9.5 to be waived.

(c) In making determinations under this subpart the Senior Procurement Executive must request the opinion of the Office of the Solicitor, Division of Legislation and Legal Counsel.

**2909.506 Procedures.**

(a) If a prospective contractor disagrees with the decision of a contracting officer regarding an organizational conflict of interest and requests higher level review as referred to in FAR 9.506, the matter must be referred to the Office of the Solicitor, Associate Solicitor for Legislation and Legal Counsel, and the Director, Division of Acquisition Management Services.

(b) Referrals must be made by the HCA concerned and include the contracting officer's decision and the position of the prospective contractor.

# PART 2910—MARKET RESEARCH

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

**2910.002 Procedures.**

(a) In accordance with FAR 6.302–1(c), purchase descriptions must not specify a product, or specific feature of a product, peculiar to a manufacturer unless they are justified to the contracting officer in writing by the office initiating

the purchase request. The justification must state that the product, or specific product feature, is essential to the Government's requirements and other similar products or features will not meet these requirements. This determination must be signed by a representative of the office originating the request and must accompany the purchase requisition submitted to the appropriate contracting office. If such a justification is not made, the contracting officer may assume that another make and model or a generic product could equally meet the DOL requirement.

(b) In accordance with FAR 10.002(b), the requisitioning office must submit to the contracting officer information demonstrating that a variety of products from various commercial sources have been considered. This requirement is not necessary for required sources (See FAR 8.001). Orders to be placed against non-mandatory sources, such as the Federal Supply Schedules, or other Governmentwide Acquisition Contracts, should include product information concerning multiple sources based on research from *www.contractdirectory.gov* site or other sources. When documented in this manner, the contracting officer may rely on this information in developing a procurement strategy, or for documenting the comparison of catalogs or pricelists.

[69 FR 22991, Apr. 27, 2004]

# PART 2911—DESCRIBING AGENCY NEEDS

## Subpart 2911.1—Selecting And Developing Requirements Documents

Sec.
2911.103 Market acceptance.

## Subpart 2911.5—Liquidated Damages

2911.501 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2911.1—Selecting And Developing Requirements Documents

### 2911.103 Market acceptance.

The authority of the Head of an Agency under FAR 11.103(a), to require offerors to demonstrate that the items offered have either achieved commercial market acceptance or been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements, and otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation, is delegated to the HCA.

## Subpart 2911.5—Liquidated Damages

### 2911.501 Policy.

In accordance with FAR 11.501(d), the authority of the Head of Agency to recommend to the Department of Treasury, Commissioner, Financial Management Services, that the amount of a contractor's liquidated damages be waived or reduced in whole or in part, is delegated to the HCA.

# PART 2912—ACQUISITION OF COMMERCIAL ITEMS

## Subpart 2912.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.
2912.302 Tailoring of provisions and clauses for the acquisition of commercial items.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2912.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

### 2912.302 Tailoring of provisions and clauses for the acquisition of commercial items.

In accordance with FAR 12.302(c), a request for waiver to tailor terms inconsistent with customary commercial

practice must be documented in a written justification by the contracting officer, and may be approved by the HCA on an individual or class basis.

# PART 2913—SIMPLIFIED ACQUISITION PROCEDURES

## Subpart 2913.1—Procedures

Sec.
2913.106–3 Soliciting competition, evaluation of quotations or offers, award and documentation.

## Subpart 2913.2—Actions At Or Below The Micro-Purchase Threshold

2913.201 General.

## Subpart 2913.3—Simplified Acquisition Methods

2913.301 Governmentwide commercial purchase card.
2913.307 Forms.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2913.1—Procedures

### 2913.106–3 Soliciting competition, evaluation of quotations or offers, award and documentation.

In accordance with FAR 13.106–3(b), simplified acquisition files must contain documentation of the factors considered in making an award in excess of the micro-purchase threshold. When other than the lowest responsive quotation from a responsible supplier is used as the basis for a purchase, the contracting officer must identify the basis (i.e., best value) of the award and include in the purchase file documentation of the reasons for rejecting any lower quotation and the name of the individual responsible for making the determination to award to other than the lowest priced quotation. The contracting officer has broad discretion in determining the award of a purchase order, which may be based on the factors listed in FAR 13.106–3. This requirement does not necessitate a separate determination if the procurement file contains preprinted standardized classifications for award.

## Subpart 2913.2—Actions at or Below the Micro-Purchase Threshold

### 2913.201 General.

The Government commercial purchase card must be used in preference to other methods of procurement for purchases up to the micro-purchase threshold. Other small purchase methods (blanket purchase agreements, third party drafts, and purchase orders) may be used in lieu of the Government purchase card when it is more cost-effective or practicable.

## Subpart 2913.3—Simplified Acquisition Methods

### 2913.301 Governmentwide commercial purchase card.

(a) The Government purchase card has far fewer requirements for documentation than other methods of purchasing. However, the same legal restrictions apply to credit card purchases that apply to other purchases using appropriated funds. If a purchase cardholder has questions about the lawfulness of a particular purchase, he or she must initially consult his or her appropriate office purchase card administrator, who will consult the Office of the Solicitor as necessary.

(b) GAO decisions surrounding the concept of the ''availability of appropriations'' are often stated in terms of whether appropriated funds are or are not ''legally available'' for a given expenditure. Restrictions on the purposes for which appropriated funds may be used come from a variety of sources, including the DOL Appropriations Acts, and decisions of the Comptroller General and his predecessor, the Comptroller of the Treasury.

(c) HCAs, administrative officers, and contracting officers are encouraged to review the GAO publication entitled Principles of Federal Appropriations Law. This document must be consulted when developing Office/Agency Purchase/Credit Card Program procedures. A number of the more common restrictions which ''accounting officers of the Government'' have had frequent occasion to consider and apply include, for example:

(1) Payment of attorney's fees;

(2) Purchase of food, entertainment or recreation;

(3) Payment of personal membership fees; and

(4) Payment of personal expense items such as gifts for employees, and entry fees for contests.

**2913.307 Forms.**

(a) In accordance with FAR 13.307, contracting officers are encouraged to use the Standard Form (SF) SF–1449, when executing commercial acquisitions. Agencies may use forms other than the SF–1449 and may print on those forms the clauses considered to be suitable for these purchases. In these instances, alternate forms should conform with the Standard Form to the maximum extent practicable.

(b) The SF–30 is to be used to modify a purchase order.

# SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

## PART 2914—SEALED BIDDING

### Subpart 2914.4—Opening of Bids and Award of Contract

Sec.
2914.404–1 Cancellation of invitations after opening.
2914.407–3 Other mistakes disclosed before award.
2914.408 Award.
2914.408–1 General.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2914.4—Opening of Bids and Award of Contract

**2914.404–1 Cancellation of invitations after opening.**

The authority of the agency head in FAR 14.404–1(c) and (f) to make a *written* determination to cancel an invitation for bids and reject all bids after opening and to authorize completion of the acquisition through negotiation is delegated to the HCA.

**2914.407–3 Other mistakes disclosed before award.**

(a) The authority to make determinations, as conferred by FAR 14.407–3(e) is delegated to the HCA, without power of redelegation, but only after consultation with the Office of the Solicitor. All such determinations shall be documented in the contract file.

(b) The following procedures must be followed when submitting doubtful cases of mistakes in bids to the Comptroller General for an advance decision, as provided by FAR 14.407–3(i).

(1) Requests must be made by the HCA after consultation with the Office of the Solicitor.

(2) Requests must be in writing, dated, signed by the requestor, addressed to the Comptroller General of the United States, General Accounting Office, Washington, DC 20548, and contain the following:

(i) The name and address of the party requesting the decision; and

(ii) A statement of the question to be decided, a presentation of all relevant facts, a statement of the requesting party's position with respect to the question, and copies of all pertinent records and supporting documentation.

**2914.408 Award.**

**2914.408–1 General.**

(a) 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:

(1) The specifications used in the invitation were not unduly restrictive;

(2) Adequate competition was solicited and it could have been reasonably assumed that more than one bid would have been submitted;

(3) The price is reasonable; and

(4) The bid is otherwise in accordance with the invitation for bids.

(b) Such a determination must be placed in the contract file.

## PART 2915—CONTRACTING BY NEGOTIATION

### Subpart 2915.4—Contract Pricing

Sec.
2915.405–70 Determining fair and reasonable price.

### Subpart 2915.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

2915.508 Discovery of mistakes.

### Subpart 2915.6—Unsolicited Proposals

2915.604 Agency points of contact.
2915.605 Content of unsolicited proposals.
2915.606 Agency procedures.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2915.4—Contract Pricing

### 2915.405–70 Determining fair and reasonable price.

(a) Where the 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 resolve the matter (see FAR 15.402), the contract action must be referred to the HCA for final resolution.

(b) Resolution under paragraph (a) of this section must be documented and signed by the HCA and included in the contract file.

## Subpart 2915.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

### 2915.508 Discovery of mistakes.

(a) The HCA is authorized to make the administrative determinations in FAR 15.508 after consultation with the Office of the Solicitor as required by FAR 14.407–4. This authority may not be redelegated.

(b) The contracting officer must process a mistake and prepare a case file in accordance with the requirements of FAR 14.407–4(e)(2). The file must be submitted to the HCA for final determination.

## Subpart 2915.6—Unsolicited Proposals

### 2915.604 Agency points of contact.

(a) HCAs shall be the preliminary contacts for unsolicited proposals. This responsibility may be delegated.

(b) HCAs must establish within their agencies procedures for handling unsolicited proposals to ensure that unsolicited proposals are controlled, evaluated, safeguarded and disposed of in accordance with FAR 15.6.

(c) The HCA must not forward for consideration an unsolicited proposal, if the proposal resembles an upcoming solicitation or a procurement identified in the current annual acquisition plan.

### 2915.605 Content of unsolicited proposals.

In addition to the contents required by FAR 15.605, unsolicited proposals for research should contain a commitment by the offeror to include cost-sharing or should represent a significant cost savings to the Department of Labor.

### 2915.606 Agency procedures.

When an unsolicited proposal is received by an official of the Department of Labor, the recipient of the proposal must forward it to the HCA. The HCA must address the requirements of FAR 15.604. The HCA must determine if there is an office(s) within the Department of Labor whose mission could be impacted by the proposal. If there is, the HCA must designate a recipient within that office as an ''assignee'', and take the following action:

(a) Within seven (7) working days of receipt, the HCA must forward the proposal to the assignee along with instructions concerning the security, review and disposition of the document.

(1) Inform the offeror of this transfer in writing (preferably by facsimile or other electronic means).

(2) Within one (1) month of receipt of the unsolicited proposal by the assignee, the office receiving the proposal must determine the merit of the unsolicited proposal.

(i) If the office finds insufficient merit to consider the unsolicited proposal further, then a letter will be sent to inform the offeror that their proposal will not be considered further, and is not being retained.

(ii) If, after a comprehensive evaluation as defined by FAR 15.606–2, the office finds merit in the proposal, it must consult with a Department of Labor contracting officer for direction in complying with FAR 15.607. If not excluded by a condition of FAR 15.607(a), a requisition may be prepared in accordance with FAR 15.607(b). If the requirement exceeds the simplified acquisition threshold inclusive of options then a request must be prepared for the Procurement Review Board in accordance with Department of Labor procedures stated in Department of Labor Manual Series 2–830 (available by mail from the Division of Acquisition Management Services).

(b) If within one (1) month of receipt (by the HCA) no assignee can be identified, the HCA must notify the offeror that the proposal is not being considered further.

# PART 2916—CONTRACT TYPES

Sec.
2916.000 Scope of part.

Subpart 2916.5—Indefinite-Delivery Contracts

2916.505 Ordering.

Subpart 2916.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2916.603–2 Application.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

**2916.000 Scope of part.**

This part describes types of contracts that may be used in acquisitions. It further prescribes policies and procedures for implementing contracts.

## Subpart 2916.5—Indefinite-Delivery Contracts

**2916.505 Ordering.**

In accordance with FAR 16.505(b)(5), the Department of Labor Task Order and Delivery Order Ombudsman is the DOL Competition Advocate (see DOLAR part 2902).

## Subpart 2916.6—Time-and-Materials, Labor-Hour, and Letter Contracts

Task orders against DOL contracts and orders against multi-agency or Governmentwide contracts for services above the micropurchase threshold must comply with the provisions of FAR 16.505.

**2916.603–2 Application.**

The HCA is authorized to extend the period for definitization of a letter contract required by FAR 16.603–2(c) in extreme cases where it is determined in writing that such action is in the best interest of the Government.

# PART 2917—SPECIAL CONTRACTING METHODS

Sec.
2917.000 Scope of part.

Subpart 2917.2—Options

2917.202 Use of options.
2917.207 Exercising options.

Subpart 2917.5—Interagency Acquisitions Under The Economy Act

2917.500 Scope of subpart.
2917.501 Definitions.
2917.502 General.
2917.503 Determinations and findings requirements.
2917.504 Ordering procedures.
2917.504–70 Signature authority and internal procedures.

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 1535; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

**2917.000 Scope of part.**

This part implements polices and procedures stated in FAR part 17.

## Subpart 2917.2—Options

**2917.202 Use of options.**

The HCA may, in unusual circumstances, approve option quantities in excess of the 50 percent limit prescribed in FAR 17.203(g)(2). The documentation required by FAR 17.205(a) must include a written justification to fully support the need for such action.

**2917.207 Exercising options.**

The contracting officer must use a standardized determination and finding before exercising an option in accordance with FAR 17.207(f).

## Subpart 2917.5—Interagency Acquisitions Under The Economy Act

**2917.500 Scope of subpart.**

This subpart establishes DOL policy and procedures to assure the appropriate and consistent use of interagency acquisitions under the Economy Act (31 U.S.C. 1535) as prescribed by FAR 17.5.

**2917.501 Definitions.**

*Interagency Acquisition* means a procedure by which a DOL agency obtains needed supplies or services from, or through, another DOL agency or Federal agency, and appropriated funds are obligated.

*Interagency Agreement* means the legal instrument used for an interagency acquisition to exchange funds or property between two DOL organizations or between a DOL agency and another Federal agency. This instrument is used when the DOL organization meets the definition of either the Requesting Agency or the Servicing Agency. ''Interagency Agreement'' and ''Interagency Acquisition'' does not include:

(1) Agreements involving supplies and services acquired from or through mandatory sources, as described in FAR part 8;

(2) Contracts with the Small Business Administration based upon Section 8(a) of the Small Business Act or a HUBZone small business under the Historically Underutilized Business Zone (HUBZone) Act of 1997;

(3) Cooperative agreements and grants; or

(4) Any agreement or acquisition where a statute authorizes exception.

*Military Interdepartmental Procurement Request (MIPR)* means a type of interagency agreement used to place orders for supplies and non-personal services with a military department.

*Requesting Agency* means the Federal agency that needs the supplies or services, and is obligating the funds to provide for the costs of performance.

*Servicing Agency* means the Federal agency which is providing the supplies or performing the services, directly or indirectly, and will be receiving the funds to provide for the costs of performance.

**2917.502 General.**

(a) *Policy*. It is the policy of DOL to require that interagency agreements are written to assure that the obligation of fiscal year funds is valid, that statutory authority exists to obtain or perform the stated requirements, that the stated requirements are consistent with DOL's mission responsibilities, and that each agreement complies with applicable laws and regulations.

(b) *Applicability*. The provisions of this subpart apply to interagency acquisitions and agreements under the Economy Act.

(c) *Appropriations principles*. The appropriate use of interagency acquisitions embodies several principles of Federal appropriations law.

(1) In order to record a valid obligation of appropriations, 31 U.S.C. 1501 imposes the requirements that interagency agreements be:

(i) A binding written agreement for specific goods or services to meet an existing *bona fide* need;

(ii) For a purpose authorized by law; and

(iii) Executed and obligated by the receiving agency before the expiration of available funds.

(2) The Economy Act authorizes interagency acquisitions and provides for payment in advance, as well as reimbursement to the appropriation account to which the performance costs have been charged. The Economy Act further authorizes the servicing agency, as an alternative to fulfilling the requirement through internal resources, to obtain the needed supplies or services by contract.

(3) An agreement entered into under the Economy Act is recorded as an obligation by the requesting agency the same as a contract. However, under the Economy Act, the obligated appropriations must be deobligated upon the date of ''expiration'' of the appropriation account to the extent that the servicing agency has not incurred obligations through charged costs or under a contract.

(4) Within DOL, the DOL agencies have a number of statutory authorities available for entering into interagency agreements. Each DOL agency, in consultation with the Office of the Solicitor, must be responsible for determining those authorities, as well as constraints applicable to the use of advance payments and contractors, and set-up procedures.

**2917.503 Determinations and findings requirements.**

*Applicability*. Before the execution of an interagency agreement under the

Economy Act, the contracting officer, or other authorized official, must sign the determination required in FAR 17.503 and 31 U.S.C. 1535.

**2917.504 Ordering procedures.**

(a) Requests for the processing of interagency agreements must be submitted to the procurement office serving the requisitioning office.

(b) The procurement request must state whether the work is to be performed by a DOL organization, a Federal agency other than DOL, or through one of these entities by a contractor.

(c) Where the Economy Act is to be used as the authority for an interagency acquisition, the requisitioning office must include the facts which support the conclusion that it is more economical to obtain the required supplies or services through the proposed interagency agreement, rather than by direct contract with a commercial concern. Current market prices or recent procurement prices may be used in this process.

(d) Orders placed under interagency agreements may take any form that is legally sufficient and reflects the agreement of the parties.

(e) The contracting officer, or authorized official, must assure compliance with the ordering procedures and payment provisions prescribed in FAR 17.504 and FAR 17.505, and require inclusion of the following provisions in all interagency agreements and/or orders placed against them:

(1) Legislative authority;

(2) Period of performance;

(3) Dollar amount of agreement;

(4) Billing provisions, including the name and address of the following offices:

(i) Designated office to receive the required deliverables; and

(ii) Designated office to receive billings and process payments;

(5) Modification and termination provisions; and

(6) Other provisions, as appropriate.

(f) The contracting officer must assure that each interagency agreement or order placed against it includes a reference number assigned by each of the parties. Such numbers must be assigned in accordance with the existing procedures established by the respective organizations.

(g) Modifications to existing interagency agreements may be accomplished through the use of an SF 30, Amendment of Solicitation/Modification of Contract, or through any other format acceptable to the parties.

**2917.504–70 Signature authority and internal procedures.**

(a) A DOL contracting officer, HCA, Agency Head, or another official designated by the Assistant Secretary for Administration and Management in accordance with FAR 17.503(c), must sign interagency agreements and/or orders placed against them which will result in a procurement action by the requesting or servicing agency.

(b) Internal procedures (DLMS 3–1700) require DOL Agency Heads to provide notice to the Director, Executive Secretariat of the signing of all new Federal Interagency Agreements and deleting expired agreements.

(c) Agencies should be aware that, in addition to the requirements of this subpart, there are various other internal Departmental procedures that apply to various types of agreements. Agencies should consult with the Office of the Solicitor and the Office of the Assistant Secretary for Administration and Management, as appropriate.

# SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

## PART 2918 [RESERVED]

## PART 2919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Sec.
2919.000 Scope of part.

### Subpart 2919.2—Policies

2919.201 General policy.
2919.202 Specific policies.
2919.202–1 Encouraging small business participation in acquisitions.
2919.202–2 Locating small business sources.

### Subpart 2919.5—Set-Asides for Small Business

2919.502 Setting aside acquisitions.
2919.505 Rejecting Small Business Administration recommendations.

### Subpart 2919.7—The Small Business Subcontracting Program

2919.704 Subcontracting plan requirements.
2919.705–1 General support for the program.
2919.705–5 Awards involving subcontracting plans.
2919.705–6 Post-award responsibilities of the contracting officer.
2919.706 Responsibilities of the cognizant administrative contracting officer.

### Subpart 2919.8—Contracting with the Small Business Administration (The 8(a) Program)

2919.812 Contract administration.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

### 2919.000 Scope of part.

This part implements FAR part 19 and small business programs at the Department of Labor.

## Subpart 2919.2—Policies

### 2919.201 General policy.

(a) It is the policy of the Department of Labor to provide maximum practicable opportunities to small businesses in acquisitions.

(b) Management responsibilities for small and disadvantaged business utilization are the responsibility of the Director, Office of Small Business Programs. This individual is responsible for performing all functions and duties prescribed in FAR 19.2 including appointing, as prescribed in FAR 19.201(d)(8), a small business specialist (SBS) for each contract office. The Department of Labor Manual Series (DLMS), Chapter 2 1000, addresses the implementation of the preference programs in procurement including HUBZone, Subcontracting Plans, Standard Form 294 (Subcontracting Report for Individual Contracts), and the report, Standard Form 295 (Summary Subcontracting Report) submission, *et al.*

(c) All DOL procurements over the simplified acquisition threshold, whether being conducted via open market or by ordering from a pre-existing contract vehicle such as GSA Schedule, must be reviewed and receive a recommendation by the Office of Small Business Programs, the Department of Labor's Office of Small Disadvantaged Business Utilization, prior to being advertised. The Acquisition Screening and Review Form DL–1–2004 shall be used for this purpose and the statement of work and market survey documentation shall be submitted to Office of Small Business Programs with the request for review.

### 2919.202 Specific policies.

Contracting officers, administrative officers and program management shall ensure that procurements are structured and conducted to afford small businesses the maximum practicable opportunity to participate in DOL's prime and subcontracts. Administrative officers will review requisitions that will result in an award of $2 million or more using available information to certify whether the acquisition would constitute a ''bundled contract'' under the definition provided in FAR 2.101 in accordance with procedures established by the Office of Small Business Programs. Each certification will be submitted to the Division of Acquisition Management Services, and included with the requisition

to the contracting officer. Reports will be provided to the Office of Small Business Programs.

### 2919.202–1 Encouraging small business participation in acquisitions.

During the performance of a contract, the contracting officer will consider performance against subcontracting plan goals, objectives and planned efforts before exercising an optional period of performance. The contracting officer will document the evaluation of the contractor's actual performance using SF–294 data compared to their approved subcontracting plan goals.

### 2919.202–2 Locating small business sources.

Any procurement conducted on an unrestricted basis will include solicitations to small businesses of each category with legislatively established government-wide procurement goals (e.g., small, small disadvantaged, women-owned small, HUBZone and service disabled veteran-owned small businesses) to the extent practicable.

## Subpart 2919.5—Set-Asides for Small Business

### 2919.502 Setting aside acquisitions.

Contracting officers will conduct market surveys specifically to determine whether procurements should be conducted via 8(a) procedures, HUBZone procedures or as small business set-asides. If a reasonable expectation exists that at least two responsible small businesses may submit offers at fair market prices (three responsible small businesses in procurements via GSA Federal Supply Schedule), then the procurement will be set aside for small business. Market surveys will be documented in all procurement actions not reserved for small businesses.

### 2919.505 Rejecting Small Business Administration recommendations.

When the SBA Procurement Center Representative appeals a ''rejection of an SBA recommendation'' as referenced in FAR 19.505(b) and (c), the appeal must be referred to the Assistant Secretary for Administration and Management who is authorized to make a final decision.

## Subpart 2919.7—The Small Business Subcontracting Program

### 2919.704 Subcontracting plan requirements.

Contracting Officers will refer subcontracting plans to the Office of Small Business Programs for review and recommendation before awarding contracts that require subcontracting plans. Contracting officers will document the substance of any agreement with the contractor that permits performance at less than the stated goals recommended by the Office of the Small Business Programs.

### 2919.705–1 General support for the program.

Contracting officers will make available a significant number of award points for quality of the subcontracting plan. High-rated subcontract plans will incorporate the highest yield of subcontracting to all categories of small businesses when compared to DOL or separately negotiated agency subcontracting goals on a dollar and percentage basis. Conversely, prime small businesses will be compared favorably to large businesses with subcontract goals, but may also be given the maximum score for qualifying under multiple small business categories. Contracting officers may also make available a significant number of award points for performance against previous subcontracting plan goals and efforts to achieve those goals.

### 2919.705–5 Awards involving subcontracting plans.

The Office of Small Business Programs will review subcontracting plans and SF 295 submissions for performance against business goals negotiated between the Department of Labor and the Small Business Administration.

### 2919.705–6 Post-award responsibilities of the contracting officer.

(a) Even when a subcontracting plan was submitted to and approved by the Office of Small Business Programs before award, the contracting officer upon award, amendment, or significant

modification of a contract, must forward to the Director, Office of Small Business Programs, a copy of the subcontracting plan that was incorporated into a contract or contract modification.

(b) Each contracting activity must maintain a list of active prime contracts containing subcontracting plans.

**2919.706 Responsibilities of the cognizant administrative contracting officer.**

Contracting officers must collect annual and semiannual subcontracting reports from contractors with established subcontracting plans. Copies of the report, Standard Form 294 (Subcontracting Report for Individual Contracts), and the report, Standard Form 295 (Summary Subcontracting Report), must be forwarded to the Director, Office of Small Business Programs, not later than the 30th day of the month following the close of the reporting period. If the contractor has not met the goals for the reporting period, the contracting officer will provide an acknowledgement to the contractor and request corrective action to be taken. If goals are not met in subsequent periods, the contracting officer must consider factors that would demonstrate a good faith effort, and take appropriate action including assessing liquidated damages in accordance with FAR 52.219–16, and/or not exercising subsequent option periods.

## Subpart 2919.8—Contracting with the Small Business Administration (The 8(a) Program)

**2919.812 Contract administration.**

(a) Contracting officers, or designees, must conduct periodic evaluations of the performance of an 8(a) contract at various stages of the contract period of performance. Any problems encountered during the performance evaluation, which cannot be resolved, must be referred to the Office of Small Business Programs for subsequent review and discussion with the appropriate SBA official.

(b) The Office of Small Business Programs and the SBA should be notified at least 45 days before initiating final action to terminate an 8(a) contract.

# PARTS 2920–2921 [RESERVED]

# PART 2922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

### Subpart 2922.1—Basic Labor Policies

Sec.
2922.101–3 Reporting labor disputes.
2922.101–4 Removal of items from contractor's facilities affected by work stoppages.
2922.103–4 Approvals.

### Subpart 2922.8—Equal Employment Opportunity

2922.802 General.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2922.1—Basic Labor Policies

**2922.101–3 Reporting labor disputes.**

Potential or actual labor disputes that may interfere with contract performance must be reported by the contracting activity to the Office of the Solicitor for legal advice or assistance. It may also become necessary to seek advice or assistance from the National Office of the Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20006, or other mediation agencies.

**2922.101–4 Removal of items from contractor facilities affected by work stoppages.**

Before initiating any action under FAR 22.101–4 for removal of items from contractors' facilities, the contracting officer must obtain legal advice from the Office of the Solicitor.

**2922.103–4 Approvals.**

The ''agency approving official'' as identified in FAR 22.103–4(a) and (b) is a manager, supervisor, or executive responsible for the contracting officer's technical representative (see 2901.603–71).

## Subpart 2922.8—Equal Employment Opportunity

### 2922.802 General.

Executive Order 11246, as amended, sets forth the Equal Opportunity clause and requires that the Secretary of Labor promote full realization of equal opportunity for all persons regardless of race, color, religion, sex, or national origin. No DOL contracting officer may contract for supplies or services in a manner to avoid applicability of the requirements of E.O. 11246.

# PART 2923—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c); 42 U.S.C. 8262(g).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2923.2—Energy And Water Efficiency and Renewable Energy

### 2923.271 Purchase and use of environmentally sound and energy efficient products and services.

The Department will implement policies and procedures that comply with the intent and specific goals mandated by the following statutes and executive orders and any other issuances as may be mandated to maximize cost efficient energy management:

(a) The GSA Federal Supply Schedule Products Guide identifies the recycled and recycled-content items available in the GSA FSS supply system. Copies of the guide may be obtained, without cost, from the GSA, Centralized Mailing List Service, P.O. Box 6477, Fort Worth, Texas, 76115, or by calling (817) 334–5215. *See also* GSA Advantage! at: *www.gsaadvantage.gov*.

(b) Executive Order 13123, *Greening the Government Through Efficient Energy Management*, dated June 8, 1999, requires agencies to select for procurement those energy consuming goods or products which are the most life cycle cost-effective (*see* FAR 7.101). Green purchasing includes the acquisition of recycled content products, environmentally preferable products and services, biobased products, energy- and water-efficient products, alternate fuel vehicles, and products using renewable energy.

(1) To the extent practicable, each program official must require vendors of goods or products to provide appropriate data that can be used to assess the life cycle cost of each good or product, including building energy system components, lighting systems, office equipment and other energy using equipment.

(2) In preparing solicitations and evaluating and selecting offers for award, contracting personnel must consider the life cycle cost data along with other relevant evaluation criteria. If life cycle costing is not used, the contract file must be documented to reflect the rationale for not obtaining and evaluating the data.

(c) Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, dated September 14, 1998, requires agencies to comply with executive branch policies for the acquisition and use of environmentally preferable products and services and implement cost-effective procurement preference programs favoring the purchase of these products and services.

(d) Executive Order 13148, *Greening the Government Through Leadership in Environmental Management Systems, dated April 21, 2000*. This Executive Order assists with developing an environmental management system. The following sources are provided as references for the subject matter indicated:

(1) The Office of the Federal Environmental Executive provides references to all greening the Government executive orders, web links to other relevant cites, and information on biobased and bioenergy products. *http://www.ofee.gov/gp/gp.htm*.

(2) The Comprehensive Procurement Guidelines program is part of the Environmental Protection Agency's continued effort to promote the use of materials recovered from solid waste. This

listing provides information on products made from recycled materials, such as the carpeting and insulation used in office buildings, or reams of office paper. *www.epa.gov/cpg*.

(3) ENERGY STAR is a government-backed program helping businesses and individuals protect the environment through superior energy efficiency. See also *http://www.eere.energy.gov/femp/procurement*. *www.energystar.gov*.

(4) The Alternative Fuels Data Center is a one-stop shop for agency alternative fuel and vehicle information needs. *http://www.afdc.nrel.gov*.

(5) The Defense Logistics Agency has created an electronic mall for buying environmentally preferable products. *www.emall.dla.mil*.

## PARTS 2924–2927 [RESERVED]

# SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

## PART 2928—BONDS AND INSURANCE

### Subpart 2928.2—Sureties and Other Security for Bonds

Sec.
2928.204 Alternatives in lieu of corporate or individual sureties.

### Subpart 2928.3—Insurance

2928.305 Overseas workers' compensation and war hazard insurance.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2928.2—Sureties and Other Security for Bonds

**2928.204 Alternatives in lieu of corporate or individual sureties.**

Upon receipt of any of the types of securities listed in FAR 28.201 or FAR 28.203, the contracting officer must verify the validity of the security and coordinate the retention of the security with the Chief Financial Officer. Contracting officers may obtain access to Department of Treasury Circular 570 through the Internet at *http://www.fms.treas.gov/c570/index.html*.

## Subpart 2928.3—Insurance

**2928.305 Overseas workers' compensation and war hazard insurance.**

The authority of the Agency Head to recommend to the Secretary of Labor waiver of the applicability of the Defense Base Act (42 U.S.C. 1651, *et seq.*) to any contract, subcontract, work location, or classification of employees, is delegated to the HCA.

## PART 2929—TAXES

### Subpart 2929.1—General

Sec.
2929.101 Resolving tax problems.

### Subpart 2929.3—State and Local Taxes

2929.303 Application of state and local taxes to Government contractors and subcontractors.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2929.1—General

**2929.101 Resolving tax problems.**

Contract tax problems or questions must be referred by the contracting officer to the Office of the Solicitor for resolution.

## Subpart 2929.3—State and Local Taxes

**2929.303 Applications of state and local taxes to Government contractors and subcontractors.**

(a) Contractors may only be treated as agents of the Government for the purposes set forth in FAR 29.303(a) upon the written review and approval of the Assistant Secretary for Administration and Management.

(b) Requests for approval under paragraph (a) of this section must be submitted by the HCA through the Office of the Solicitor, to the Division of Acquisition Management Services, for further action.

## PART 2930—COST ACCOUNTING STANDARDS ADMINISTRATION

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2930.2—CAS Program Requirements

**2930.201–5 Waiver.**

(a) The HCA is authorized to waive CAS requirements as provided in FAR 30.201–5.

(b) Requests for waivers under paragraph (a) of this subsection must be prepared by the contracting officer as

prescribed in FAR 30.201–5(e) and submitted to the HCA.

# PART 2931—CONTRACT COST PRINCIPLES AND PROCEDURES

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2931.1—Applicability

### 2931.101 Objectives.

Individual and class deviations from cost principles in FAR part 31 must be processed as prescribed in DOLAR subpart 2901.4.

[69 FR 22991, Apr. 27, 2004]

# PART 2932—CONTRACT FINANCING

### Subpart 2932.4—Advance Payments for Non-Commercial Items

Sec.
2932.402 General.
2932.407 Interest.

### Subpart 2932.7—Contract Funding

2932.703 Contract funding requirements.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2932.4—Advance Payments for Non-Commercial Items

### 2932.402 General.

The HCA is authorized to approve determinations and findings as well as contract terms for advance payments. The contracting officer must submit a recommendation for approval or disapproval of the contractor's request to the HCA.

### 2932.407 Interest.

The HCA may authorize advance payments without interest pursuant to FAR 32.407.

## Subpart 2932.7—Contract Funding

### 2932.703 Contract funding requirements.

(a) Except in unusual circumstances, the contracting office may not issue solicitations until an approved procurement request (PR), 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 obligation before receipt of the PR certifying that funds are available when:

(1) The Assistant Secretaries, Inspector General, Bureau Chief, Deputy Under Secretary, Solicitor of Labor, Commissioner, or Director of the Women's Bureau certifies that such action is necessary to meet critical program schedules for their program area;

(2) The Budget Officer certifies that program authority has been issued and funds to cover the acquisition will be available before the date set for receipt of proposals;

(3) The solicitation includes the clause at FAR 52.232–18, Availability of Funds.

(b) The contracting office may not open bids/close solicitations until a PR, either planning or final, has been received that contains a certification of fund availability. Only the project or program official with the authority to commit funds from the agency that initiated the PR may make that written certification.

(c) The project or program office that initiated the PR is responsible for obtaining required certifications.

# PART 2933—PROTESTS, DISPUTES, AND APPEALS

### Subpart 2933.1—Protests

Sec.
2933.102 General.
2933.103 Protests to the agency.
2933.104 Protests to GAO.

### Subpart 2933.2—Disputes And Appeals

2933.203 Applicability.
2933.209 Suspected fraudulent claims.
2933.211 Contracting officer's decision.
2933.212 Contracting officer's duties upon appeal.
2933.213 Obligation to continue performance.

2933.270 Department of Labor Board of Contract Appeals.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c); E.O. 12979, 60 FR 55171, 3 CFR, 1995 Comp., p. 417.

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2933.1—Protests

### 2933.102 General.

(a) The Division of Acquisition Management Services, 200 Constitution Ave., NW., S–1513 B, Washington, DC 20210–0001, telephone (202) 693–7285, facsimile (202) 693–7290 (or the Office acting in that capacity), is responsible for coordinating procurement protests filed with the General Accounting Office.

(b) The authority of the Assistant Secretary for Administration and Management under FAR 33.102(b) to determine that a solicitation, proposed award, or award does not comply with the requirements of law or regulation may be delegated to the HCA.

### 2933.103 Protests to the agency.

(a) In accordance with Executive Order 12979, the following procedures apply to agency protests:

(1) The filing time frames in FAR 33.103(e) apply to agency protests. An agency protest is filed when the protest complaint is received at the location the solicitation designates for serving protests; or if none is designated, when filed with a contracting officer or HCA.

(2) An interested party filing an agency protest may request either that the contracting officer or the Agency Protest Official decide the protest. The ''Agency Protest Official'' is an individual above the level of the contracting officer and designated by the Assistant Secretary for Administration and Management, such as the Competition Advocate. The deciding official, whether a contracting officer or Agency Protest Official, must work in consultation with the Office of the Solicitor to resolve the protest.

(3) In addition to the information required by FAR 33.103(d)(2), the protest must:

(i) Indicate that it is a protest to the agency;

(ii) Be contemporaneously filed with the contracting officer;

(iii) 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.

(b) ''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.

(c) If the Agency Protest Official is chosen by the protestor to decide the protest, this is an alternative to a decision by the contracting officer, not an appeal. The Agency Protest Official will not consider appeals from a contracting officer's decision on an agency protest.

(d) The deciding official should consider conducting a scheduling conference with the protestor within five (5) days after the protest is filed. The scheduling conference will establish deadlines for written arguments in support of the agency protest and for agency officials to present information in response to the protest issues. Alternative Dispute Resolution techniques will be considered if determined appropriate by the deciding official.

(e) Oral conferences may take place either by telephone or in person. Other parties may attend at the discretion of the deciding official.

(f) Apart from its protest document, the protestor will be given only one opportunity to support or explain in writing the substance of its protest. Department of Labor 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.

(g) The preferred practice is to resolve protests through informal oral discussion.

(h) An interested party may represent itself or be represented by legal counsel. The Department of Labor will not reimburse the protester for any legal fees or costs related to the agency protest.

(i) If an agency protest is received before contract award, the contracting officer may only make award if the HCA makes a determination to proceed under FAR 33.103(f)(1). Similarly, if an agency protest is filed within ten (10) days after award, or within five (5) days of the offer of a debriefing required by FAR 15.505 or 15.506, whichever is later, the contracting officer must suspend performance of the contract unless the HCA 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.

(j) 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, dependent upon advice of legal counsel.

(k) The deciding official must send a confirming letter within three (3) days after the decision using a means that provides evidence of 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.

(3) If the deciding official sustains the protest, relief may consist of any of the following:

(i) Recommendation that the contract be terminated for convenience or cause, or that the solicitation be canceled.

(ii) Recompeting the requirement from the beginning of the solicitation or from the last round of negotiations.

(iii) Amending the solicitation.

(iv) Refraining from exercising contract options.

(v) Awarding a contract consistent with statute, regulation, and the terms of the solicitation.

(vi) Other action that the deciding official determines is appropriate.

(l) If the deciding 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 deciding official, if the contracting officer was not the deciding official, in writing, if any recommendations have not been implemented and explain why.

(m) If the protest is denied, and contract performance has been suspended under paragraph (i) of this section, the contracting officer will not lift such suspension until five (5) days after the protest decision has been issued, to allow the protester to file a protest with the General Accounting Office, unless the HCA makes a new finding under FAR 33.103(f)(3). The contracting officer shall consider allowing such suspension to remain in effect pending the resolution of any GAO proceeding.

(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 Labor.

**2933.104 Protests to GAO.**

(a) *General procedures.* The HCA has the responsibility to prepare and provide to the General Accounting Office (GAO) the agency report with the information required by FAR 33.104(a). The agency report must be coordinated with the Office of the Solicitor before the report is signed and sent to the GAO.

(b) *Protests before award.* The authority of the HCA under FAR 33.104(b) to authorize a contract award when the agency has received notice from the GAO of a protest filed directly with the GAO is nondelegable. The HCA has the responsibility to prepare and provide to the GAO the written finding with the information required by FAR 33.104(b)(1). The written finding must be coordinated with Office of the Solicitor before the HCA affirms its approval by signing the written finding and sending it to the GAO. Copies of the signed written finding and the signed written notice to the GAO must be provided to the Senior Procurement Executive within two (2) working days after they are sent to the GAO.

(c) *Protests after award.* The authority of the HCA under FAR 33.104(c) to authorize contract performance when the agency has received notice from the GAO of a protest filed directly with the GAO is nondelegable. The HCA has the

responsibility to prepare and provide to the GAO the written finding with the information required by FAR 33.104(c)(2). The written finding must be coordinated with the Office of the Solicitor before the notice is signed by the HCA and sent to the GAO.

(d) *Notice to the GAO*. The authority of the HCA under FAR 33.104(g), to report to the GAO the failure to fully implement the GAO recommendations with respect to a solicitation for a contract or an award or a proposed award of a contract within 60 days of receiving the GAO recommendations, is nondelegable. The written notice must be coordinated with the Office of the Solicitor before the notice is signed by the HCA and sent to the GAO. A copy of all notices to the GAO submitted in accordance with FAR 33.104(g) must be provided to the Senior Procurement Executive within (two) working days after they are sent to the GAO.

## Subpart 2933.2—Disputes and Appeals

### 2933.203 Applicability.

The authority of the Agency Head to determine that the application of the Contract Disputes Act of 1978 to any contract with a foreign government or agency of that government, or an international organization or a subsidiary body of that organization, would not be in the public interest is delegated to the HCA.

### 2933.209 Suspected fraudulent claims.

The contracting officer must refer all matters relating to suspected fraudulent claims by a contractor under the conditions in FAR 33.209 to the Office of the Inspector General for further action or investigation.

### 2933.211 Contracting officer's decision.

The written decision required by FAR 33.211(a)(4) must include, in the paragraph listed under FAR 33.211(a)(4)(v), specific reference to the Department of Labor Board of Contract Appeals (LBCA), 800 K Street, NW, Suite 400 North, Washington, DC 20001–8002.

### 2933.212 Contracting officer's duties upon appeal.

(a) When a notice of appeal has been received, the contracting officer must endorse on the appeal the date of mailing (or the date of receipt if the notice was not mailed). The contracting officer must also notify the Solicitor of Labor of the appeal.

(b) The contracting officer should prepare and transmit the administrative file for the Office of the Solicitor and assist with the appeal.

### 2933.213 Obligation to continue performance.

The contracting officer must include the clause at FAR 52.233–1, Disputes (Alternate I), in contracts where continued performance is necessary pending resolution of any claim arising under or relating to the contract.

### 2933.270 Department of Labor Board of Contract Appeals.

(a) The Department of Labor Board of Contract Appeals (LBCA) is authorized by the Secretary to consider and determine appeals from decisions of contracting officers arising under a contract, or relating to a contract, made by the Department or any other executive agency when such agency or the Administrator of the Office of Federal Procurement Policy has designated the LBCA to decide the appeal.

(b) The LBCA rules of procedure are contained in 41 CFR part 29–60.104, appearing in the July 1, 1983, edition of 41 CFR, subtitle A, chapters 19–100.

# PARTS 2934–2935 [RESERVED]

# PART 2936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

## Subpart 2936.2—Special Aspects of Contracting for Construction

Sec.
2936.201 Evaluation of contractor performance.
2936.209 Construction contracts with architect-engineer firms.

## Subpart 2936.5—Contract Clauses

2936.516 Quality surveys.

### Subpart 2936.6—Architect-Engineer Services

2936.602 Selection of firms for architect-engineer contracts.
2936.602–1 Selection criteria.
2936.602–2 Evaluation boards.
2936.602–3 Evaluation board functions.
2936.602–4 Selection Authority.
2936.602–5 Short selection processes for contracts not to exceed $100,000.
2936.603 Collecting data on and appraising firms' qualifications.
2936.604 Performance evaluation.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2936.2—Special Aspects of Contracting for Construction

**2936.201 Evaluation of contractor performance.**

The HCA must establish procedures to evaluate construction contractor performance and prepare performance reports as required by FAR 36.201.

**2936.209 Construction contracts with architect-engineer firms.**

As required by FAR 36.209, no contract for construction of a project may be awarded to the firm that designed the project, or to its subsidiaries or affiliates, without the written approval of the Assistant Secretary for Administration and Management. Any request for approval must include the reason(s) why award to the design firm is required; an analysis of the facts involving potential or actual organizational conflicts of interest including benefits and detriments to the Government and the prospective contractor; and the measures which are to be taken to avoid, neutralize, or mitigate conflicts of interest.

## Subpart 2936.5—Contract Clauses

**2936.516 Quality surveys.**

The HCA is authorized to make the determination regarding the impracticability of Government performance of original and final surveys as prescribed in FAR 36.516.

## Subpart 2936.6—Architect-Engineer Services

**2936.602 Selection of firms for architect-engineer contracts.**

**2936.602–1 Selection criteria.**

HCAs are authorized to approve the use of design competition under the conditions in FAR 36.602–1(b).

**2936.602–2 Evaluation boards.**

HCAs must establish procedures to provide permanent or ad hoc architect-engineer evaluation boards as prescribed in FAR 36.602–2. Procedures must provide for the appointment of private practitioners of architecture, engineering, or related professions when such action is determined in writing by the HCA to be essential to meeting the Government's minimum needs.

**2936.602–3 Evaluation board functions.**

The selection report required in FAR 36.602–3(d) must be prepared for the approval of the HCA.

**2936.602–4 Selection Authority.**

The HCA is authorized to serve as the designated Selection Authority in accordance with FAR 36.602–1.

**2936.602–5 Short selection processes for contracts not to exceed $100,000.**

The selection process prescribed in FAR 36.602–5(b) must be used for architect-engineer contracts not exceeding the simplified acquisition threshold.

**2936.603 Collecting data on and appraising firms' qualifications.**

(a) HCAs who acquire architect-engineer services must establish procedures to comply with the requirements of FAR 36.603.

(b) Copies of procedures established under paragraph (a) of this section must be submitted to the Division of Acquisition Management Services, for review and recommendation for approval to the HCA when updated. These procedures must include a list of names, addresses, and telephone numbers of offices or boards assigned to maintain architect-engineer qualification data files.

**2936.604 Performance evaluation.**

(a) The HCA must establish procedures to evaluate architect-engineer contractor performance as required in FAR 36.604. Normally, the performance report must be prepared by the contracting officer's authorized representative or other official who was responsible for monitoring contract performance and who is qualified to evaluate overall performance. DOL Agency/Office procedures must prescribe instructions for review of the report, before distribution, as prescribed in FAR 36.604(b).

(b) Performance reports must be made using Standard Form 1421, Performance Evaluation (Architect-Engineer) as prescribed in FAR 36.702(c). Details covering unsatisfactory performance, including Government notification to the contractor and written comments by the contractor, must also be attached to the report.

# PART 2937—SERVICE CONTRACTING

## Subpart 2937.1—Service Contracts-General

Sec.
2937.103 Contracting officer responsibility.
2937.103–70 Department of Labor checklist to aid analysis and review of requirements for service contracts.

## Subpart 2937.2—Advisory and Assistance Services

2937.203 Policy.

## Subpart 2937.6—Preference for Performance-Based Contracting (PBC)

2937.602 Elements of performance-based contracting.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2937.1—Service Contracts-General

**2937.103 Contracting officer responsibility.**

The HCA is responsible for establishing internal review and approval procedures for service contracts in accordance with OFPP Policy Letter 93–1 (Reissued), ''Management Oversight of Service Contracting''. As defined by FAR 37.101, contracts for personal services are permitted under the circumstances in 5 U.S.C. 3109.

**2937.103–70 Department of Labor checklist to aid analysis and review of requirements for service contracts.**

Contracting specialists and contracting officers must work in close collaboration with the beneficiaries of the services being purchased to ensure that contractor performance meets contract requirements and performance standards.

(a) *General.* Following is a checklist to aid analysis and review of requirements for service contracts.

(1) Is the statement of work complete, with a clear-cut division of responsibility between the contracting parties?

(2) Is the statement of work discussed in terms the market can satisfy?

(3) Does the statement of work encompass all commercially available services that can meet the actual functional need (eliminates any nonessential preferences that may thwart full and open competition)?

(4) Is the statement of work performance-based to the maximum extent possible (i.e., is the acquisition structured around the purpose of the work to be performed, as opposed to either the manner by which the work is to be performed or a broad and imprecise statement of work)?

(b) *Cost effectiveness.* If the response to any of the following questions is negative, the agency may not have a valid requirement or not be obtaining the requirement in the most cost effective manner.

(1) Is the statement of work written so that it supports the need for a specific service?

(2) Is the statement of work written so that it permits adequate evaluation of contractor versus in-house cost and performance?

(3) Are the choices of contract type, quality assurance plan, competition strategy, or other related acquisition strategies and procedures in the acquisition plan appropriate to ensure good

contractor performance to meet the user's needs?

(4) If a cost reimbursement contract is contemplated, is the acquisition plan adequate to ensure that the contractor will have the incentive to control costs under the contract?

(5) Is the acquisition plan adequate to address the cost effectiveness of using contractor support (either long-term or short-term) versus in-house performance?

(6) Is the cost estimate or other supporting cost information adequate to enable the contracting office to effectively determine whether costs are reasonable?

(7) Is the statement of work adequate to describe the requirement in terms of ''what'' is to be performed as opposed to ''how'' the work is to be accomplished?

(8) Is the acquisition plan adequate to ensure that there is proper consideration given to ''quality'' and ''best value?''

(c) *Control*. If the response to any of the following questions is negative, there may be a control problem.

(1) Are there sufficient resources to evaluate contractor performance when the statement of work requires the contractor to provide advice, analysis and evaluation, opinions, alternatives, or recommendations that could significantly influence agency policy development or decision-making?

(2) Does the quality assurance plan provide for adequate monitoring of contractor performance?

(3) Is the statement of work written so that it specifies a contract deliverable or requires progress reporting on contractor performance?

(4) Is agency expertise adequate to independently evaluate the contractor's approach, methodology, results, options, conclusions or recommendations?

(d) *Conflicts of interest*. If the response to any of the following questions is affirmative, there may be a conflict of interest.

(1) Can the potential offeror perform under the contract to devise solutions or make recommendations that would influence the award of future contracts to that contractor?

(2) If the requirement is for support services (such as system engineering or technical direction), were any of the potential offerors involved in developing the system design specifications or in the production of the system?

(3) Has a potential offeror participated in earlier work involving the same program or activity that is the subject of the present contract, wherein the offeror had access to source selection or proprietary information not available to other offerors competing for the contract?

(4) Will the contractor be evaluating a competitor's work?

(5) Does the contract allow the contractor to accept its own products or activities on behalf of the Government?

(6) Will the work under this contract put the contractor in a position to influence government decision-making, e.g., developing regulations that will affect the contractor's current or future business?

(7) Will the work under this contract affect the interests of the contractor's other clients?

(8) Are any of the potential offerors, or their personnel who will perform the contract, former agency officials who—while employed by the agency—personally and substantially participated in the development of the requirement for, or the procurement of, these services within the past two years?

(e) *Competition*. If the response to any of the following questions is negative, competition may be unnecessarily limited.

(1) Is the statement of work defined so as to avoid overly restrictive specifications or performance standards?

(2) Is the contract formulated in such a way as to avoid creating a continuous and dependent arrangement with the same contractor?

(3) Is the use of an indefinite quantity or term contract arrangement appropriate to obtain the required services?

(4) Will the requirement be obtained through the use of full and open competition?

## Subpart 2937.2—Advisory and Assistance Services

**2937.203 Policy.**

(a) HCAs having a requirement for certain advisory and assistance services are required by the Department of Labor Manual Series (*See* DLMS 2 836) to prepare a written justification for such services. Written justification must be submitted to the Assistant Secretary for Administration and Management for review by the Procurement Review Board, for Assistant Secretary for Administration and Management approval.

(b) Regardless of the type of action planned, the justification in paragraph (a) of this section must include the following:

(1) A statement of need, which certifies that the requested services do not unnecessarily duplicate any previously performed work.

(2) Nature and scope of the need, and the results expected.

(3) Extent to which in-house staff availability was assessed, and the reasons why procurement of outside services is necessary.

(4) Any additional information or data that support the requirement for a contract.

(5) Name(s) and title(s) of official(s) who will be assigned as project officer(s) to work with the contractor, and who can be contacted for additional Information.

(6) A statement that the Government policy on advisory and assistance services has been reviewed and complies with FAR 37.203.

## Subpart 2937.6—Preference for Performance-Based Contracting (PBC)

**2937.602 Elements of performance-based contracting.**

(a) Performance-based contracting is defined in FAR 37.101 and discussed in FAR 37.6. Although FAR part 37 primarily addresses services contracts, PBC is not limited to these contracts. PBC is the preferred way of contracting for services. (*See* exceptions listed in FAR 37.102.) Generally, when contract performance risk under a PBC specification can be shifted to the contractor to allow for the operation of objective incentives, a contract type with objectively measurable incentives (e.g., Firm-Fixed-Price, Fixed-Price-Incentive-Fee, or Cost-Plus-Incentive-Fee) is appropriate. However, when contractor performance (e.g., cost control, schedule, or quality/technical) is best evaluated subjectively using qualitative measures, a Cost-Plus-Award-Fee contract may be used.

(b) A labor hour level-of-effort contract is not considered a PBC.

## PARTS 2938–2941 [RESERVED]

# SUBCHAPTER G—CONTRACT MANAGEMENT

## PART 2942—CONTRACT ADMINISTRATION AND AUDIT SERVICES

### Subpart 2942.1—Contract Audit Services

Sec.
2942.101 Policy.

### Subpart 2942.15—Contractor Performance Information

2942.1501 Scope.
2942.1502 Policy.
2942.1503 Procedures.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2942.1—Contract Audit Services

**2942.101 Policy.**

The OASAM Division of Cost Determination is responsible for establishing billing rates and indirect cost rates as prescribed in FAR 42.7 for the Department of Labor.

## Subpart 2942.15—Contractor Performance Information

**2942.1501 Scope.**

This subpart provides policies and procedures for evaluating, maintaining, and releasing contractor performance information under DOL contracts.

**2942.1502 Policy.**

DOL contracting officers are required to use or interface with the Past Performance Information Retrieval System (PPIRS), and specifically the National Institutes of Health's Contractor Performance System. The HCA is responsible for ensuring that a contractor performance evaluation system is generated to meet the requirements of FAR subpart 42.15, including compliance with subcontracting plans. Contracts, task orders, and delivery orders, exceeding the simplified acquisition threshold, should be formally evaluated in writing. Interim evaluations should be performed on contracts exceeding one year in duration. This will assist contractors with improving marginal performance and identifying any major deficiencies. It will also facilitate performance evaluations at contract completion, as well as determining whether to exercise contract options, if any.

**2942.1503 Procedures.**

(a) In accordance with FAR 42.1502, the contracting officer will prepare an interim evaluation of a contractor's performance at least annually for submission to the Past Performance Information Retrieval System (PPIRS), and specifically the Contractor Performance System maintained by the National Institutes of Health.

(b) The contracting officer, or designee, must determine who will evaluate a contractor's performance. The contracting officer's technical representative, program manager, contract specialists or administrators, and users are candidates likely to be selected to perform the evaluation.

(c) A contractor's performance evaluation should be obtained from a person who monitored contractor performance when that individual's assignment of duties or employment terminates before physical completion of the contract. The areas of performance to be selected for evaluation should be tailored to the type of supplies or services normally acquired by the contracting activities and the type of contract. HCAs must ensure uniformity of the evaluation criteria within their contracting activities.

(d) Release of contractor performance evaluation information.

(1) Requests for performance evaluation information from the public must be processed in accordance with FOIA, as implemented by DOL under 29 CFR part 70.

(2) Release of a contractor's performance evaluation information to other Federal agencies is subject to FAR 42.1502. When the performance evaluation information is released to other federal agencies, it should be provided with a written statement that it is nonpublic information that must be

processed under FOIA principles if a request for its disclosure is received.

(e) Even though the retention period for past performance evaluation information is three years (*see* FAR 42.1503), the contractor's performance evaluation, any contractor rebuttal, and final decision become a part of the contract file. Therefore, disposal of the contractor's evaluation information must be accomplished in accordance with FAR 4.804.

# PART 2943—CONTRACT MODIFICATIONS

## Subpart 2943.2—Change Orders

Sec.
2943.205 Contract clauses.

## Subpart 2943.3—Forms

2943.301 Use of forms.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2943.2—Change Orders

### 2943.205 Contract clauses.

HCAs may establish procedures, or office policies, when appropriate for authorizing the contracting officer to vary the 30-day period for submission of adjustment proposals to the clauses prescribed by FAR 43.205.

## Subpart 2943.3—Forms

### 2943.301 Use of forms.

(a) FAR 43.301(a)(1)(vi) requires the use of Standard Form 30 (SF–30) to execute any obligation or deobligation of contract funds after award. FAR 13.307(c)(3) allows, and the Department of Labor prefers, the use of the SF–30 for simplified acquisitions. The SF–30 also must be used to deobligate funds when effecting contract closeout when obligated funds exceed the final contract costs. In such an instance, the SF–30 may be issued as an administrative modification on a unilateral basis if the contractor's financial release has been separately obtained.

(b) The contracting officer must include, in any unilateral contract modification issued for contract closeout, a statement that the contractor has signed a release of claims and indicate the date the release of claims was signed by the contractor.

# PART 2944—SUBCONTRACTING POLICIES AND PROCEDURES

## Subpart 2944.1—General

Sec.
2944.101 Waiver.

## Subpart 2944.2—Consent To Subcontract

2944.201–1 Consent requirements.
2944.202 Contracting officer's evaluation.
2944.202–2 Considerations.
2944.203 Consent limitations.

## Subpart 2944.3—Contractors' Purchasing Systems Reviews

2944.302 Requirements.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2944.1—General

### 2944.101 Waiver.

The waiver of consent must be in writing, signed by the contracting officer, and included in the contract file. The waiver must include all supporting facts, including the rationale for waiving the consent to subcontract requirements.

## Subpart 2944.2—Consent To Subcontract

### 2944.201–1 Consent requirements.

In accordance with FAR 44.201–1(b) or FAR 44.201–2, advance notification and agreement are required for all cost-reimbursement, time-and-materials, or labor-hour subcontracts exceeding the simplified acquisition threshold.

### 2944.202 Contracting officer's evaluation.

### 2944.202–2 Considerations.

The review required by FAR 44.202–2(a) must be documented in writing (including supporting facts and rationale), signed by the contracting officer, and included in the contract file.

**2944.203 Consent limitations.**

Any limitations placed on the consent to subcontract must be documented in writing (including supporting facts and rationale), signed by the contracting officer, and included in the contract file.

## Subpart 2944.3—Contractors' Purchasing Systems Reviews

**2944.302 Requirements.**

The authority of the Assistant Secretary for Administration and Management under FAR 44.302(a), to raise or lower the $25 million review level for a contractor's purchasing system, may not be delegated. When a contractor's purchasing system review is required by the contracting officer, the effort must be coordinated with the OASAM Business Operations Center's Division of Acquisition Management Services and the Division of Cost Determination.

# PART 2945—GOVERNMENT PROPERTY

### Subpart 2945.1—General

Sec.
2945.104 Review and correction of contractors' property control systems.
2945.105 Records of Government property.

### Subpart 2945.3—Providing Government Property to Contractors

2945.302 Providing facilities.

### Subpart 2945.4—Contractor Use and Rental of Government Property

2945.403 Rental-use and charges clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2945.1—General

**2945.104 Review and correction of contractors' property control systems.**

When the Government's property administrator determines that review and approval of the contractor's property control system rests with DOL, the Government's property administrator must review the system to determine whether the contractor will be able to meet the requirements of FAR 45.104. The review must be completed, signed by the appointed property administrator, and retained in the contract file.

**2945.105 Records of Government property.**

Contracting officers must maintain a file on any Government-furnished property (GFP) in the possession of contractors. As a minimum, the file must contain the following:

(a) A copy of the applicable portions of the contract that list the GFP;

(b) Contracting officer's letters assigning the GFP administrator to the contract;

(c) Written evidence that the contractor's property control system was reviewed and approved as required by FAR 45.104;

(d) If applicable, documentation of the request and approval or denial of the contractor's requests to acquire or fabricate special test equipment in accordance with FAR 45.307 or other property;

(e) The contractor's written notice of receipt of the GFP and any reported discrepancies thereto, as required by FAR 45.502–1 and 45.502–2, respectively;

(f) Any other documents pertaining to or affecting the status of the GFP in the possession of contractors or subcontractors under the contract;

(g) Documentation of the screening and disposal of all GFP as required by FAR 45.6.

## Subpart 2945.3—Providing Government Property to Contractors

**2945.302 Providing facilities.**

The HCA is authorized to make the determination to provide facilities to a contractor as prescribed in FAR 45.302–1(a)(4).

## Subpart 2945.4—Contractor Use and Rental of Government Property

**2945.403 Rental-use and charges clause.**

The HCA must make the determination to charge rent on the basis of use under the clause at FAR 52.245–9 when the contracting officer provides access to Government production and research property, as prescribed in FAR 45.403(a).

## PARTS 2946–2951 [RESERVED]

# SUBCHAPTER H—CLAUSE AND FORMS

## PART 2952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

### Subpart 2952.2—Text of Provisions and Clauses

**2952.201–70 Contracting Officer's Technical Representative (COTR).**

Insert the following clause into contracts requiring COTR representation under 2901.603.71:

*Contracting officer's technical representative (COTR)* May 2004

(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 deliverables; 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 must issue such changes.

## PART 2953—FORMS

### Subpart 2953.1—General

Sec.

2953.100 Request for Recommendation by Procurement Review Board DL 1–490.
2953.101 Simplified Acquisition Documentation Checklist DL 1–2216.
2953.102 Quotation for Simplified Acquisitions DL 1–2078.
2953.103 Acquisition Screening and Review—over $100,000 DL 1–2004.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

### Subpart 2953.1—General

**2953.100 Request for Recommendation by Procurement Review Board DL 1–490.**

The following form must be used by the requisitioning office to submit a request for review by the Procurement Review Board as specified in DOLAR 2901 and 2943. This form must be submitted through the Assistant Secretary for the program office to the Director, Division of Acquisition Management Services, for scheduling before the Procurement Review Board.

Request for Recommendation by Procurement Review Board

**U.S. Department of Labor**

INITIATING AGENCY: _____ POINT OF CONTACT: _____

INITIATING OFFICE: _____ TELEPHONE NUMBER: _____

**1. Title, Purpose, Amount, Period of Performance**

A. Title and purpose of contract, grant, or cooperative agreement: _____

B. Total dollar obligations attributable to this request: _____

C. Period of Performance requested for this action:
From: _____ To (including optional periods): _____

**2. Type of Request/Authority**

A. Type of Request (check all that apply)

- ☐ New Sole Source Contract or Contract Modification or Extension (FAR 6.302 and DLMS 2-836). Complete Item 5.
- ☐ New Sole Source Discretionary Grant or Cooperative Agreement (DLMS 2-836), or Modification or Extension of a Discretionary Grant or Cooperative Agreement (DLMS 2-836). Complete Item 5.
- ☐ Advisory and Assistance (A&A) Services (FAR 37.2). Complete Item 6.
- ☐ Ratification of an unauthorized commitment (FAR 1.602-3). Complete Item 7.
- ☐ Waiver to contract with a Current/Former Government Employee (individual or owner) (FAR 3.6 and DOLAR 2903.6). Attach Narrative.
- ☐ Application for use of Brand Name Specifications (FAR 6.302-1). Complete Item 5.
- ☐ Potential financial conflicts (DLMS 2-836(b)(2) and FAR 3.104-7(b)). Attach Narrative.

B. Authority. If this request involves a grant or cooperative agreement, provide the specific legal authority, including citation (e.g. Section # of the XXXX Act, # U.S.C. ####): _____

**3. Information about Proposed Recipient of Contract, Grant, or Cooperative Agreement**

A. Name: _____

B. Address: _____

C. Type of Organization: (circle all that apply)
Large Business / Small Business
Profit/ Nonprofit or Not-for-Profit / Foreign
Government / Educational Institution / Faith-Based or Community-Based
Other (describe) _____

D. To ensure that this organization is not currently suspended or debarred from federal programs, attach the results of a word search of the organization's name at http:/www.epls.gov/servlet/EPLSSearchMain/1.

E. (Enter City/State or Circle applicable area) Nationwide Foreign Region: NE SE MW NW SW
Area of Performance/Benefit: City: _____ State: _____

**4. Other Contracts, Grants or Cooperative Agreements with Proposed Recipient**

Provide the following information to the extent possible for each other contract, grant and/or other agreement active within the last year between the proposed organization and the Department of Labor using the following format. Additional references may be provided by attachment.

Title of Project: _____
Agency Served: _____ Period of Performance: _____
Contract/Grant/Agreement Number: _____ Total Life Cycle Cost to date: _____

☐ Additional references attached.

DL 1-490
(Rev. 10/03)

**5. Sole Source Justification** **[Skip If Not Applicable]**

☐ If this is a request for sole source contract, grant, or cooperative agreement authority, review the instructions and identify below the bases for a sole source award. Please attach a succinct narrative supporting each of the bases chosen to support the sole source selection. If you are claiming that the proposed recipient is the only responsible source or has unique qualifications, you must provide supporting information such as market research or other available information indicating whether there are other potential recipients and, if so, explain why you do not consider them acceptable. In addition, outline any steps that will be taken in the future to eliminate the need for sole source authority.

**6. Advisory And Assistance Services (A&A)** **[Skip If Not Applicable]**

A. Check one of the following: ☐ Sole Source A&A ☐ Competitive A&A value over $50,000

B. Subject to FAR 37.203, agencies may contract for advisory and assistance services, when essential to the agency's mission, to:

☐ (1) Obtain outside points of view to avoid too limited judgement on critical issues;
☐ (2) Obtain advice regarding developments in industry, university, or foundation research;
☐ (3) Obtain the opinions, special knowledge, or skills of noted experts;
☐ (4) Enhance the understanding of, and develop alternative solutions to, complex issues;
☐ (5) Support and improve the operation of organizations; or
☐ (6) Ensure the more efficient or effective operation of managerial or hardware systems.

Check the applicable box(es) above and attach written explanation.

**7. Ratification Of Unauthorized Commitments** **[Skip If Not Applicable]**

Ratifications of unauthorized commitments are authorized only under FAR 1.602-3 (c) which identifies seven limitations on use of the authority, and DOLAR 1.602-3, which outlines the DOL ratification procedures. Please review those requirements and attach to this form the required documents, including findings and a determination by the Agency Head that the statements are accurate, the Contracting Officer's determination that the price is fair and reasonable with a recommendation for payment, and legal counsel's (SOL/ETLS) determination that the ratification is legally supportable.

**8. Conflict Of Interest Certification (Must Be Completed For Each Action):**

I certify to the best of my knowledge and belief that statements provided herein are accurate and true, and I have no organizational, personal, financial or other conflicts of interest which could call into questions my objectivity in this matter or present a prohibited relationship under either 18 U.S.C. 208 or 5 C.F.R. § 2635.502.

Program Official (Contracting or Grant Officer's Technical Representative)

____ Otherwise, I have attached documentation to explain a possible relationship.

Signature _____ Date _____

Agency Head

____ Otherwise, I have attached documentation to explain a possible relationship.

Signature _____ Date _____

Note: Conflict of Interest statements apply to individuals and may be signed only by the individuals to whom they apply.

DL 1-490
(Rev. 10/03)

INSTRUCTIONS FOR COMPLETING THE DL 1-490

**General Instructions: Agencies should consult DLMS 2-836, as well as the cited provisions of the Federal Acquisition Regulation (FAR) and Department of Labor Acquisition Regulation (DOLAR), as they prepare submissions to the PRB. Agencies also should ensure that their submissions are concise, but complete.**

Item 1. Provide a one sentence title to describe the type of grant, contract, or cooperative agreement, and a short description of the purpose of the requested action. The total dollar threshold should include proposed optional periods of performance and additional services.

Item 2. FAR references may be found at http://www.arnet.gov/far/loadmainre.html; the Department of Labor Acquisition Regulation (DOLAR) may be found at http://www.dol.gov/dol/allcfr/Title_48/Chapter_29.htm; and all other references may be found at:http://www.labornet.dol.gov/DCS_FileSystem/DLMS2Administration/dlms2_0800.doc. If the proposed action is a grant or cooperative agreement, please provide the specific legal authority, including citation (e.g. Section ____ of the ___ Act, ___ U.S.C. ___ ), for the grant or cooperative agreement. You also may wish to consult the division of the Office of the Solicitor that serves your agency.

Item 3. The company or organization (including sub-organization) should be identified.

Item 4. The OASAM/Business Operations Center/Office of Acquisition and Management Services/Division of Acquisition Management Services may be able to assist you in this effort.

Item 5. Sole source justifications are summarized below. *Please note, however, that authorizing program statutes or appropriation laws sometimes include specific provisions restricting non-competitive actions. In those cases, the statutory authority supercedes the authority outlined below and the statutory authority should be cited in your response to item 5.*

Contract Authority:

- FAR 6.302-1 Sole Source and no other supplies or services will satisfy agency requirements
  (i) unsolicited proposal
  (ii) follow on to competed action for a major system.
  (iii) rights in data, patent rights, copyrights or secret processes make supplies available from only one source.
- FAR 6.302-2 Unusual and compelling urgency.
- FAR 6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services for dispute resolution.
- FAR 6.302-4 International agreement.
- FAR 6.302-5 Authorized or required by statute.
- FAR 6.302-6 National security
- FAR 6.302-7 Public interest (requires Secretarial and Congressional approval)

Grant Authority: DLMS 2, Chapter 800, Section 836(g):

(1) A non-competitive award is authorized or required by the statute funding the program.
(2) The activity to be funded is essential to the satisfactory completion of an activity presently funded by DOL, wherein competition would result in significant or real: harm (further harm) to the public good; expenses in excess of any potential savings to the Government; disruption to program services; duplication of work at additional cost to the Government; or delay in the time of program completion.
(3) Services are available from only one responsible source and no substitute will suffice; or the recipient has unique qualifications to perform the type of activity to be funded.
(4) The recipient has submitted an unsolicited proposal that is unique or innovative and has outstanding merit.
(5) The activity will be conducted by an organization using it's own resources or those donated or provided by third parties, and DOL support of the activity would be highly cost effective.
(6) It is necessary to fund a recipient that has an established relationship with the agency in order to: (A) Maintain an existing facility or capability to furnish services or benefits of particular significance to the agency on a long term basis; or (B) Maintain a capability for investigative, scientific, technical, economic, or sociological research.
(7) The application for the activity was evaluated under the criteria of the competition for which the application was submitted, was rated high enough to have deserved selection under that competition, and was not selected for funding because the application was mishandled by the Department.
(8) The Secretary has determined that a noncompetitive award is in the public interest. This authority may not be delegated.

Item 6. Advisory and Assistance Services are defined in FAR 2.101 and the policy is detailed in FAR Part 37.2.

Item 7. Ratification, as used in this subsection, means the act of approving an unauthorized commitment, by an official who has the authority to do so. The attached document should include: a brief description of what was acquired without authority; any mitigating statements; and a findings and determination by the Agency head that the statements are accurate, including a Contracting Officer's determination that the price is fair and reasonable, with a recommendation for payment and the concurrence of legal counsel (SOL/ETLS) with that determination.

Item 8. Conflict of Interest Certifications are necessary with each DL 1-490 submitted to the PRB. Approval may not be granted without proper signature. Conflict of Interest certifications are personal to the individual signing and may not be signed or delegated by one person on behalf of another.

NOTE: The Procurement Review Board reviews these requests and makes a recommendation to approve/disapprove to the Assistant Secretary for Administration and Management based on the merits of the case provided in the request.



**2953.101 Simplified Acquisition Documentation Checklist DL 1–2216.**

The following checklist must be used to document all simplified acquisitions at or below the simplified acquisition threshold.

Simplified Acquisition Documentation Checklist

**U.S. Department of Labor**

**PART I: CHECKLIST - Complete Section A for purchases less than $2,500, or Sections A and B for purchases between $2,500 and $100,000**

**SECTION A. Micro-purchases - Less than $2,500 (not set aside for small business only; no competition required if price is determined reasonable)**

( ✓ or blank for N/A)

- ☐ Sufficient funds are available to cover this purchase, and the price reflected on this order is considered fair and reasonable.
- ☐ All Quotation information is properly documented, and applicable/required clearances and/or approvals have been obtained are included in this file
- ☐ See www.jwod.com and **www.unicor.gov**. Required sources of supplies/services, including excess supplies, were reviewed prior to the selection of this vendor (n/a for delivery orders against existing contracts)
- ☐ The vendor does not appear on the List of Parties Excluded from Federal Procurement Programs. Reference http://epls.arnet.gov/
- ☐ This order **does not** represent an unauthorized commitment of funds requiring ratification under FAR 1.602-3 (otherwise attach documentation)

**SECTION B. Purchase Between $2,501 and $100,000** (set aside for small business, competition is required for open market orders, schedule comparison is required for GSA/FSS orders)

( ✓ or blank for N/A)

- ☐ The order was best value among two or more solicited open market vendors. **Use Form DL 1-2078, if not, complete Parts II and III below.**
- ☐ The requirement was set aside for small business participation only. **If not, complete Part IV below.**
- ☐ The procurement is for Information Technology products or software and has been reviewed for compliance with Section 508 and SmartBuy licenses.
- ☐ The item complies with http://www.eere.energy.gov/femp/procurement/ policies on recycling, and Energy star compliance.
- ☐ If this is a Delivery Order against a GSA/Federal Supply Schedule, at least 3 vendors schedules were reviewed prior to issuing orders.
- ☐ Written Solicitation between $10,000 - $25,000 was displayed in a public place, open market requirements over $25,000 were synopsized.
- ☐ **Service Contract Act.** This is an Open Market Purchase: ☐ primarily a product, ☐ exempt per 29 CFR 541, ☐ Davis-Bacon applicable, or ☐ SCA WD included ☐ (SF98 & 98a issued)

**PART II: PRICING MEMORANDUM - Price reasonableness is based on ( ✓ all that apply)**

- ☐ Commercial Catalog Pricing/Published Advertisement (Source Date: _____ Page Number )
- ☐ Market Research or established market prices.
- ☐ Comparison to prior purchase of same or similar item Vendor: _____ Purchase Order No: _____ Date of Order _____ Unit Price:
- ☐ Best Value analysis recommended by Technical Personnel (Specify) _____ (continue on back)
- ☐ Other (i.e. contracting officer knowledge, comparison to independent government estimate) _____

**PART III: SOLE SOURCE DOCUMENTATION - Only one source was solicited for the following reason(s) ( ✓ all that apply)**

- ☐ The item is sole source in nature, i.e. copyright/patient, proprietary software/hardware, or original equipment manufacturer, and not available from any other source.
- ☐ Urgent and Compelling - state nature of emergency and reason no competition was obtained (lack of planning is not sufficient reason)

**PART IV: LARGE BUSINESS DOCUMENTATION -** The requirement is not awarded to a small business because ( ✓ all that apply)

- ☐ No small businesses were located that can provide the required goods/services
- ☐ No quotes were received from small businesses
- ☐ Quotes received from small businesses were not the lowest prices or the best value (considering quality, delivery, quantity, past performances, etc)

**DOCUMENTATION DISTRIBUTION DATE:** ☐ Vendor ☐ Finance ☐ Accounting ☐ Requestor ☐ File

**ORDER PROCESSED BY:** Contract Specialist: _____ (Signature Date)

**CONCUR:** Contracting Officer: _____ (Signature Date)

DL 1-2216
(10/03)

## 2953.102 Quotation for Simplified Acquisitions DL 1–2078.

The following form must be used to document all simplified acquisitions above the micro-purchase threshold and below the simplified acquisition threshold. This form may also be used to document commercial acquisitions on a fixed price basis up to $5 million.

Quotation for Simplified Acquisitions
($2,500-$100,000)

**U.S. Department of Labor**
Acquisition Management Services

| 1. Effective Date | 2. Order Number | 3. Quotes Oral ☐ Written ☐ |
|---|---|---|
| | | |

**4. Vendor Solicited**

| | Telephone Number | Date of Quote | Delivery Offer | FOB Point |
|---|---|---|---|---|
| Vendor 1.<br>Company Name:<br>Point of Contact:<br>City, State, Telephone:<br>Business Type<br>Person Contacted: | | | | |
| Vendor 2.<br>Company Name:<br>Point of Contact:<br>City, State, Telephone:<br>Business Type<br>Person Contacted: | | | | |
| Vendor 3.<br>Company Name:<br>Point of Contact:<br>City, State, Telephone:<br>Business Type<br>Person Contacted: | | | | |

| Quantity | Description of Product or Service | Vendor 1. Unit Price | Vendor 1. Total Amount | Vendor 2. Unit Price | Vendor 2. Total Amount | Vendor 3. Unit Price | Vendor 3. Total Amount |
|---|---|---|---|---|---|---|---|
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| | | | | | | | |
| | | | | | | | |
| | | Total Amount | | Total Amount | | Total Amount | |

**5. Basis for Price Reasonableness**

Low Cost or Best Value Based on (Specify)

**6. Other Factors Affecting Source (FSS, Etc.)**

(Specify)

DL 1-2078
(10/03)

**2953.103 Acquisition Screening and Review—over $100,000 DL 1–2004.**

The requiring organization must complete the following form for all acquisitions above the *simplified acquisition threshold*. This form will then be submitted through the contracting officer to the Office of Small Business Programs for review.

Acquisition Screening and Review - over $100,000 **U.S. Department of Labor**

**A. Originating Agency**

1. Purchasing Office
Name:
Street Address:
City: State: Zip:
Phone Number:

2. Date of Purchase Request:

3. Estimated Dollar Value
This FY:_____
Total Contract Value:_____

4. Period of Performance (Include Option Years):

5. Description of Product or Service:

6. Recommended Method of Procurement (Select a method from block 11 below):

7. Signature of Small Business Specialist: Date:

**B. Contracting Office**

8. Solicitation Number:

9. Estimated Date of Release:

10. Estimated Date of Response/Opening:

11. Check all applicable boxes:
Proposed Method of Procurement
☐ GSA - Multiple Award Schedule order
☐ Multi-agency contract order
☐ Govt-wide acquisition contract order
☐ Open Market Buy - Select *one* of the following:
☐ 8(a)/HUBZone sole source (I.D. Proposed Contractor)
☐ HUBZone sole source
☐ 8(a) sole source
☐ HUBZone competition
☐ 8(a) competition
☐ 100% Small Business Set-Aside
☐ Partial Small Business Set-Aside
☐ Unrestricted - Insufficient Small Business (attach justification, proposed subcontracting amounts and evaluation preference for SDB's)

12. NAICS Code and Small Business Size Standard:

13. Proposed Synopsis:
☐ Yes
☐ No. Per FAR 5.202
☐ FEDBIZOPPS
☐ Other _____

14. Proposed Issuing Number of Solicitations to:
No.
____8(a)
____HUBZone
____Small Disadvantaged Business (SDB)
____Women-Owned Small Business (WOSB)
____Service Disabled Veterans-Owned Small Business (SDVOSD)
____Veteran-Owned Small Business (VOSB)
____Small Business (SB)
____Large Business (LB)

15. Is this a bundled procurement? ☐ Yes ☐ No
(If yes - attach supporting documentation/justification)

**Procurement History**

16. Has Exact Item/Service Been Previously Awarded?
☐ Yes (Complete the rest of the section)
☐ No

17. Period of Performance:

18. Contract Number:

19. SIC/NAICS Code and Small Business Size Standard:

20. Name, Address and business type of Contractor
_____ ☐ HUBZone
_____ ☐ 8(a)
_____ ☐ SDB
_____ ☐ WOSB
_____ ☐ SDVOSB
_____ ☐ VOSB
_____ ☐ SB
_____ ☐ LB

21. Total Value:

22. Method of Procurement:

23. No. of Responses Received
_____8(a)
_____HUBZone
_____Small Disadvantaged Business (SDB)
_____Woman-Owned Small Business (WOSB)
_____Service Disabled Veteans-Owned Small Business (SDVOSB)
_____Veteran-Owned Small Business (VOSB)
_____Small Business (SM)
_____Large Business (LB)

24. Signature of Contracting Officer: Date:

**C. Office of Small Business Programs - OSDBU/Small Business Administration Procurement Center Representative**

25.
☐ I concur with the recommendations.
☐ I recommend soliciting additional sources including those on the attached list.
☐ I do not concur with the recommendations and request suspension of the procurement action pending an appeal under FAR 19.505.S B A Form 70 is attached.

26. Signature of OSDBU/SBA Procurement Center Representative: Date:

DL-1-2004
Rev. 07-03

## PARTS 2954–2999 [RESERVED]