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Part II

Department of Commerce

48 CFR Chapter 13

Commerce Acquisition Regulation (CAR); Final Rule

DEPARTMENT OF COMMERCE

48 CFR Chapter 13

[Document No. 080730954–0033–02]

RIN 0605–AA26

Commerce Acquisition Regulation (CAR)

AGENCY: Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: We, the Department of Commerce, issue a final rule to bring the Commerce Acquisition Regulation in alignment with the Federal Acquisition Regulation (FAR) and to streamline DOC's internal policy and guidance. This final rule updates the entire CAR through FAC 2005–21.

DATES: This rule is effective April 7, 2010.

ADDRESSES: The final rule is available on the DOC Web site *http://www.doc.gov,* or *http://www.regulations.gov,* or by contacting the Department of Commerce: Room 1854, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Virna Evans, 202–482–3483.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce implements or supplements the Federal Acquisition Regulations through its own regulations codified in 48 CFR Chapter 13. Collectively, these regulations are known as the Commerce Acquisition Regulation (CAR). The CAR was originally codified on March 30, 1984 and last updated on September 12, 1995 through a final rule published in the **Federal Register.** The Department of Commerce publishes this action to update the CAR to bring the Department of Commerce's policies and procedures in alignment with the FAR through FAC 2005–21. The following is a summary of the overall changes made to the CAR.

The Department amends the CAR to update the regulations since its last revision on September 12, 1995. In order to bring the CAR in alignment with the current provisions of the FAR, the Department added several new provisions to address those instances where the FAR indicates that agency procedures are required or need to be developed, as well as provisions to define roles and responsibilities and provide guidance on Department's policy and procedures for accountable personal property, inherently governmental functions, emergency acquisitions, small business programs, environmental programs, foreign acquisitions, contract financing, protests, disputes, and appeals, major system acquisitions, research and development contracting, security processing, value engineering, and termination of contracts. Moreover, the Department added numerous new clauses that correspond to the new procedural requirements added to the CAR.

In making the updates referenced in this final rule, various sections of the CAR have been renumbered and/or renamed to align with the current structure of the FAR. This amendment facilitates readers in locating the corresponding FAR section in the CAR. In addition, the Department added many references to chapters of the Commerce Acquisition Manual (CAM) to provide further information on the delegation of authority for a specific provision. In particular, the references to the CAM help clarify the roles and responsibilities across the agency and within the Department of Commerce's 5 Operating Units authorized to operate contracting offices (National Institute of Standards and Technology (NIST), National Oceanic and Atmospheric Administration (NOAA), Office of the Secretary, U.S. Census Bureau, and Patent and Trademark Office (PTO)). Finally, the authority citations for the CAR have been revised to correspond to current authority.

For a detailed description of the changes by CAR Part, *see* the proposed rule published on October 13, 2009 in the **Federal Register** (74 FR 52541). The document is also available at *http://www.Regulations.gov* under Docket Number: DOC–2009–0003–0001.

Request for Comments

On October 13, 2009, the Department published and requested public comments on the proposed changes to the CAR. The comment period lasted between October 13, 2009–December 14, 2009. No comments were received from the public during this period. Therefore, the Department adopts without change, the regulations as proposed on October 13, 2009.

Classification

Executive Order 12866: This rule has been determined to be not significant for purposes of Executive Order 12866, Regulatory Planning and Review.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions), unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule. No comments were received regarding the economic impact of this rule. As a result, a Final Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act: This rule does not impose any new information collections subject to review and approval by OMB under the Paperwork Reduction Act. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

48 CFR Part 1301

Acquisition regulations, Federal acquisition regulations, Government procurement, Government contracts, Procurement, Reporting and recordkeeping requirements.

48 CFR Part 1302

Definitions, Government procurement, Terms.

48 CFR Part 1303

Antitrust, Conflict of interests, Ethical conduct, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1304

Classified information, Computer technology, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1305

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1306

Government procurement, Justifications, Sole source acquisitions.

48 CFR Part 1307

Acquisition planning, Government procurement, Inherently governmental functions, Reporting and recordkeeping requirement.

48 CFR Part 1308

Government procurement, Printing.

48 CFR Part 1309

Debarment, Government procurement, Suspension, Reporting and recordkeeping requirement.

48 CFR Part 1311

Government procurement, Liquidated damages, Market acceptance.

48 CFR Part 1312

Government procurement, Tailoring clauses, Tailoring provisions, Tailoring terms and conditions.

48 CFR Part 1313

BPA, Blanket purchase agreement, Government procurement, Imprest funds, Micro-purchase authority, Purchase order modifications, Small business, Third-party drafts, Training.

48 CFR Part 1314

Equipment inspection, Government procurement, Pre-Bid conference, Pre-proposal conference, Reporting and recordkeeping requirements, Site visit.

48 CFR Part 1315

Evaluation, Indefinite quantity, Inquiries, Government procurement, Oral presentations, Proposal preparation, Reporting and recordkeeping requirements, Should-cost review, Source selection, Unsolicited proposals.

48 CFR Part 1316

Government procurement, Ombudsman.

48 CFR Part 1317

Multi-year contract, Congressional notification, Interagency agreement.

48 CFR Part 1318

Emergency procurement, Reporting and recordkeeping requirements, Contingency operation, Warrants.

48 CFR Part 1319

Partnership agreement, Set aside, Small business, SBA.

48 CFR Part 1322

Aged, Child labor, Civil rights, Equal employment opportunity, Government procurement, Individuals with disabilities, Labor, Labor disputes, Prisoners, Reporting and recordkeeping requirements, Veterans, Wages, Work stoppages.

48 CFR Part 1323

Affirmative procurement program, Air pollution control, Drug abuse, Drug-free workplace, Energy conservation, Environmental, Government procurement, Hazardous substances, Recycling, Renewable energy, Water pollution control.

48 CFR Part 1324

Freedom of Information, Government procurement, privacy.

48 CFR Part 1325

Buy American Act, Customs duties and inspection, Foreign currencies, Foreign trade, Government procurement.

48 CFR Part 1326

Disaster assistance, Government procurement.

48 CFR Part 1327

Copyright, Government procurement, Inventions and patents, Reporting and recordkeeping requirements.

48 CFR Part 1328

Government procurement, Insurance, Reporting and recordkeeping requirements, Surety bonds.

48 CFR Part 1329

Government procurement, Reporting and recordkeeping requirements, Taxes, Tax exemptions.

48 CFR Part 1330

Accounting, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1331

Accounting, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1332

Electronic funds transfer, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1333

Administrative practice and procedure, Claims, Government procurement.

48 CFR Part 1334

Earned value management, EVM, EVMS, Major system acquisition.

48 CFR Part 1335

FFRDC, Human subject.

48 CFR Part 1336

Evaluation boards, Government procurement, Reporting and recordkeeping requirements, Selection.

48 CFR Part 1337

Contractor processing, Government Procurement, Information Technology, Security, Service contracting, Standards.

48 CFR Part 1339

Contractor processing, Government procurement, Information Technology, Security, Service contracting.

48 CFR Part 1341

Government procurement, Reporting and recordkeeping requirements, Utilities.

48 CFR Part 1342

Accounting, Government procurement, Indirect cost rates, Postaward conference, Reporting and recordkeeping requirements.

48 CFR Part 1344

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1345

Government procurement, Government property, Reporting and recordkeeping requirements.

48 CFR Part 1346

Government procurement, Inspection, Reporting and recordkeeping requirements, Warranties.

48 CFR Part 1348

Government procurement, Reporting and recordkeeping requirements, Value Engineering Change Proposals (VECP).

48 CFR Part 1349

Criminal conduct, Default, Fraud, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1350

Government procurement, Hazardous risk, National defense, Nuclear risk, Reporting and recordkeeping requirements.

48 CFR Part 1352

Government procurement, Matrix, Reporting and recordkeeping requirements.

48 CFR Part 1353

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1370

Period of performance, Pre-bid conference, Pre-proposal conference, Site visit.

48 CFR Part 1371

Inspection, Guarantees, Liability, Liens, Ship construction, Ship repair, Vessel, Insurance.

Dated: February 22, 2010.

John F. Charles,

Deputy Assistant Secretary for Administration.

■ For the reasons stated in the preamble, the Department of Commerce revises 48 CFR Chapter 13 to read as follows:

CHAPTER 13—DEPARTMENT OF COMMERCE

SUBCHAPTER A—GENERAL

Part
1301 Department of Commerce Acquisition Regulations System.
1302 Definitions of words and terms.
1303 Improper business practices and personal conflicts of interest.
1304 Administrative matters.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

1305 Publicizing contact actions.
1306 Competition requirements.
1307 Acquisition planning.
1308 Required sources of supplies and services.
1309 Contractor qualifications.
1311 Describing agency needs.
1312 Acquisition of commercial items.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

1313 Simplified acquisition procedures.
1314 Sealed bidding.
1315 Contracting by negotiation.
1316 Types of contracts.
1317 Special contracting methods.
1318 Emergency acquisitions.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

1319 Small business programs.
1322 Application of labor laws to Government acquisitions.
1323 Environment, energy and water efficiency, renewable energy technologies, occupational safety, and drug-free workplace.
1324 Protection of privacy and freedom of information.
1325 Foreign acquisition.
1326 Other socioeconomic programs.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

1327 Patents, data, and copyrights.
1328 Bonds and insurance.
1329 Taxes.
1330 Cost accounting standards administration.
1331 Contract cost principles and procedures.
1332 Contract financing.
1333 Protests, disputes, and appeals.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

1334 Major system acquisition.
1335 Research and development contracting.
1336 Construction and architect-engineer contracts.
1337 Service contracting.
1339 Acquisition of information technology.
1341 Acquisition of utility services.

SUBCHAPTER G—CONTRACT MANAGEMENT

1342 Contract administration.
1344 Subcontracting policies and procedures.
1345 Government property.
1346 Quality assurance.
1348 Value engineering.
1349 Termination of contracts.
1350 Extraordinary contractual actions.

SUBCHAPTER H—CLAUSES AND FORMS

1352 Solicitation provisions and contract clauses.
1353 Forms.

SUBCHAPTER I—DEPARTMENT SUPPLEMENTAL REGULATIONS

1370 Universal solicitation provisions and contract clauses.
1371 Acquisitions involving ship construction and ship repair.

SUBCHAPTER A—GENERAL

PART 1301—DEPARTMENT OF COMMERCE ACQUISITION REGULATIONS SYSTEM

Sec.
1301.000 Scope of part.

Subpart 1301.1—Purpose, Authority, Issuance

1301.101 Purpose.
1301.103 Authority.
1301.104 Applicability.
1301.105 Issuance.
1301.105–1 Publication and code arrangement.
1301.105–2 Arrangement of regulations.
1301.105–3 Copies.

Subpart 1301.3—Agency Acquisition Regulations

1301.301 Policy.
1301.303 Publication and codification.
1301.304 Agency control and compliance procedures.

Subpart 1301.4—Deviations From the FAR

1301.403 Individual deviations.
1301.404 Class deviations.

Subpart 1301.6—Career Development, Contracting Authority, and Responsibilities

1301.601 General.
1301.602 Contracting officers.
1301.602–1 Authority.
1301.602–170 Provisions and clauses.
1301.602–3 Ratification of unauthorized commitments.
1301.602–370 Ratification approval by Procurement Counsel.
1301.603 Selection, appointment, and termination of appointment.
1301.603–1 General.
1301.603–2 Selection.
1301.603–3 Appointment.
1301.603–4 Termination.
1301.670 Appointment of contracting officer's representative (COR).
1301.670–70 Provisions and clauses.
1301.671 Assignment of program and project managers.

Subpart 1301.7—Determinations and Findings

1301.707 Signatory authority.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

1301.000 Scope of part.

This part sets out general Department of Commerce Acquisition Regulation (CAR) policies, including information regarding the maintenance and administration of the CAR, acquisition policies and practices, and procedures for deviation from the CAR and the Federal Acquisition Regulation (FAR). This part describes the Commerce Acquisition Regulation in terms of establishment, relationship to the Federal Acquisition Regulation, arrangement, applicability, and deviation procedures.

Subpart 1301.1—Purpose, Authority, Issuance

1301.101 Purpose.

The CAR establishes uniform acquisition policies and procedures that implement and supplement the FAR. If there is a discrepancy between the CAR and FAR, the FAR will take precedence.

1301.103 Authority.

The CAR is issued under the authority of section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b), and FAR Subpart 1.3 by the Department Procurement Executive pursuant to a delegation initiating from the Secretary of Commerce.

1301.104 Applicability.

The CAR applies to all Department of Commerce (DOC) acquisitions as defined in Part 2 of the FAR, except where expressly excluded.

1301.105 Issuance.

1301.105–1 Publication and code arrangement.

(a) The CAR is published in the **Federal Register,** in cumulative form in the Code of Federal Regulations (CFR), and is available online at the U.S. Department of Commerce, Office of Acquisition Management Web site.

(b) The CAR is issued as Chapter 13 of Title 48 of the CFR.

1301.105–2 Arrangement of regulations.

(a) *General.* The CAR is divided into the same parts, subparts, sections, and subsections as the FAR.

(b) *Numbering.* If the DOC does not have supplemental regulations there will be no corresponding coverage in the CAR, and there will be gaps in the CAR numbering system.

1301.105–3 Copies.

(a) Copies of the CAR in **Federal Register** or CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(b) The CAR is available online at the U.S. Department of Commerce, Office of Acquisition Management Web site (*http://oam.ocs.doc.gov*).

Subpart 1301.3—Agency Acquisition Regulations

1301.301 Policy.

(a) The designee authorized to prescribe the CAR is set forth in the Commerce Acquisition Manual (CAM) 1301.70.

(b) The DOC internal operating guidance and procedures are contained in the CAM and other policy guidance documents issued by the Procurement Executive relating to acquisitions. The DOC Contracting Offices may issue additional guidance and procedures.

1301.303 Publication and codification.

(a) The CAR parallels the FAR in format, arrangement and numbering system. Coverage within the CAR is identified by the prefix "13" or "130" followed by the complete FAR citation to the subsection level (*e.g.,* CAR coverage of FAR 1.602–1 is cited as 1301.602–1).

(b) Supplementary material without a FAR counterpart will be codified using 70 and up as appropriate for the part, subpart, section, or subsection number (*e.g.,* Part 1370, subpart 1301.70, section 1301.370 or subsection 1301.301–70).

1301.304 Agency control and compliance procedures.

Operating unit counsel shall limit issuance of directives that restrain the flexibilities found in the FAR.

Subpart 1301.4—Deviations From the FAR

1301.403 Individual deviations.

The designee authorized to approve individual deviations from the FAR is set forth in CAM 1301.70.

1301.404 Class deviations.

The designee authorized to approve class deviations from the FAR is set forth in CAM 1301.70.

Subpart 1301.6—Career Development, Contracting Authority, and Responsibilities

1301.601 General.

The agency head for procurement matters is the Chief Financial Officer/Assistant Secretary for Administration (CFO/ASA), unless prohibited by statute. The authority for agency head for procurement matters is delegated to the Procurement Executive as the authority to establish lines of contracting authority within DOC and to implement policies and procedures related to the acquisition process. Specific contracting authorities are set forth in CAM 1301.70.

1301.602 Contracting officers.

1301.602–1 Authority.

In accordance with CAM 1301.70, only individuals who have been certified as contracting officers through issuance of a Certificate of Appointment by the Senior Bureau Procurement Official may exercise the authority of DOC contracting officers. In addition to the authority to enter into, administer, and terminate contracts, contracting officers have been delegated certain functions as set out in Appendix A to CAM 1301.70.

1301.602–170 Provisions and clauses.

Insert clause 1352.201–70, *Contracting Officer's Authority,* in all solicitations and contracts.

1301.602–3 Ratification of unauthorized commitments.

(a) Insert clause 1352.201–71, *Ratification Release,* in a contract document under which payment is made for unauthorized commitments after a ratification has been processed.

(b)(1) Unauthorized commitments occur when the Department accepts goods or services in the absence of an enforceable contract entered into by an authorized official. It is the policy of DOC that all acquisitions are to be made only by Government officials having authority to make such acquisitions. Acquisitions made by other than authorized personnel are contrary to Departmental policy and the Department is not bound by any formal or informal type of agreement or contractual commitment which is made by persons who are not delegated contracting authority. Payment for goods or services accepted in the absence of an authorized commitment may be made only through the ratification process. Unauthorized commitments may be considered matters of serious misconduct and may subject the responsible employees to appropriate disciplinary actions.

(2) The delegation of the ratification authority is set forth in CAM 1301.70. All requests for ratification must fully explain the circumstances that gave rise to the unauthorized commitment and detail, if appropriate, any disciplinary action taken with respect to any responsible employee. Ratifications may be approved only if all criteria in FAR 1.602–3 have been met.

1301–602–370 Ratification approval by Procurement Counsel.

Ratifications may not be approved unless the concurrence of Procurement Counsel is obtained.

1301.603 Selection, appointment, and termination of appointment.

1301.603–1 General.

The Department's procurement career management program and system for the selection, appointment, and termination of appointment of contracting officers are described in CAM 1301.6.

1301.603–2 Selection.

In addition to the criteria set forth in FAR 1.603–2, selection of contracting officers shall be based upon Section 4 of CAM 1301.6.

1301.603–3 Appointment.

In addition to the criteria set forth in FAR 1.603–3, appointment of contracting officers shall be based upon Section 4 of CAM 1301.6.

1301.603–4 Termination.

In addition to the criteria set forth in FAR 1.603–4, termination of contracting officers shall be based upon Section 4 of CAM 1301.6.

1301.670 Appointment of contracting officer's representative (COR).

The Department's Contracting Officer's Representative certification program for the nomination, appointment and cancellation of CORs is described in CAM 1301.670.

1301.670–70 Provisions and clauses.

Insert clause 1352.201–72, *Contracting Officer's Representative (COR),* in all solicitations and contracts where a COR will be appointed.

1301.671 Assignment of program and project managers.

The Department's Program and Project Manager certification program for the assignment and certification of Program and Project Managers is described in CAM 1301.671.

Subpart 1301.7—Determinations and Findings

1301.707 Signatory authority.

Signatory authority for determinations and findings (D&Fs) is specified in the FAR for the associated subject matter unless otherwise noted in CAM 1301.70.

PART 1302—DEFINTIONS OF WORDS AND TERMS

Subpart 1302.1—Definitions

Sec.
1302.101 Definitions.
1302.170 Abbreviations.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1302.1—Definitions

1302.101 Definitions.

Accountable Personal Property means all personal property for which responsibility for control is formally assigned to an individual, and official property records are maintained as set forth in DOC PPMM Chapter 4.

Agency Head (or Head of Agency) (HA) means the Secretary of Commerce, except, pursuant to Department Organization Order (DOO) 10–5, *Chief Financial Officer and Assistant Secretary for Administration,* the head of the agency for procurement matters shall be the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA), unless a statute provides that the authority of the Secretary is non-delegable.

Chief Acquisition Officer (CAO) means the Department's executive-level non-career employee designated pursuant to the *Services Acquisition Reform Act* to advise and assist the head of the agency and other agency officials to ensure the mission of the agency is achieved through the management of the agency's acquisition activities. The CFO/ASA has been designated by the Head of the Agency as the Chief Acquisition Officer for the Department of Commerce.

Civilian Agency Acquisition Council (CAAC) means the council that assists the Administrator of General Services in developing and maintaining the Federal Acquisition Regulation (FAR) System by developing or reviewing all proposed changes to the FAR. The Council is comprised of a representative designated by each of several Federal departments and agencies, including the DOC. The CAAC coordinates its activities with the Defense Acquisition Regulations Council (DARC). The CAAC is authorized under 48 CFR 1.2.

Commerce Acquisition Manual (CAM) means non-regulatory uniform policies and procedures for internal operations associated with acquiring supplies and services within the Department that implements and supplements the FAR and CAR.

Commerce Acquisition Regulation (CAR) means uniform acquisition policies and procedures, which implement and supplement the FAR.

Contracting Activity means the operating units identified under the definition of "Operating Units" below. Contracting activities may or may not have authority to operate contracting offices (*see* definition for *Contracting Office*).

Contracting Office means an office that awards or executes contracts for supplies or services and performs post-award functions. The operating units authorized to operate contracting offices are identified in DAO 208–2.

Contracting Officer means an individual designated authority by the Senior Bureau Procurement Official (BPO) to enter into, administer, and/or terminate contracts and make related determinations and findings. Only those individuals who have been certified as contracting officers, through the issuance of a Certificate of Appointment (Contracting Officer Warrant (SF 1402)), by the BPO in accordance with the requirements and procedures of the CAR and the CAM may exercise the authorities of contracting officers. However, by virtue of their positions, the Head of the Agency, the Procurement Executive, and the Heads of Operating Units are also designated as contracting officers.

Department or Departmental or DOC means the Department of Commerce.

Head of Agency (HA)—see definition for "Agency Head."

Head of Contracting Office (HCO) means those individuals designated by the BPO to head the contracting offices within each operating unit that has designated contracting authority to award and administer contracts. In performing their duties, HCOs are empowered to the full limits of the Department's contracting authority. The HCO must be a procurement professional in the GS–1102 occupational series (or equivalent OPM occupational designation). BPOs will issue each HCO a Contracting Officer Warrant that delegates the authority to enter into, administer, and/or terminate contracts and to make related determinations and findings.

Head of the Contracting Activity (HCA) means, for purposes of delegation of contracting authority, officials who are designated as Heads of Operating Units (those who are assigned by the President or by the Secretary to manage the primary or constituent operating units of the DOC) in orders establishing the respective operating units, with the exception of the Office of the Secretary. Such officials are designated as the HCA for procurements initiated in support of the procurement activities of that operating unit. The Chief Financial Officer and Assistant Secretary for Administration has been designated as the HCA for procurements initiated in support of the programs and activities of the Office of the Secretary and all other Secretarial Offices and Departmental Offices.

Office of Small and Disadvantaged Business Utilization (OSDBU), The means the advocacy and advisory office responsible for promoting the use of small, small disadvantaged, 8(a), women-owned, veteran-owned, service-disabled veteran-owned, and HUBZone small businesses within the Department acquisition process.

Office of the Assistant General Counsel for Administration, Employment & Labor Law Division means the Department Legal Office that provides advice and guidance to management regarding employment and labor law issues, including the legal standards for taking adverse and performance-based actions.

Office of the Assistant General Counsel for Administration, Ethics Law and Program Division means the Department Legal Office that provides advice and guidance regarding conflict of interest statutes, ethics regulations, and related laws.

Operating Units are organizational entities outside the Office of the Secretary charged with carrying out specified substantive functions (*i.e.,* programs) of the Department and are identified in DAO 208–2.

Procurement Counsel means, except for the Patent and Trademark Office (PTO), the Office of the Assistant General Counsel for Finance & Litigation, Contract Law Division, the office responsible for providing legal review of applicable contract actions and procurement legal advice to all operating units, and handling procurement-related litigation. "Procurement Counsel" for all PTO procurement-related actions means Office of General Law.

Procurement Executive (or Senior Procurement Executive (PE)) means the official appointed pursuant to Executive Order 12931 and the Services Acquisition Reform Act of 2003 to carry out the responsibilities identified in both the Executive Order and the Act. The Director for Acquisition Management is the Procurement Executive for the Department of Commerce.

Senior Bureau Procurement Official (BPO) means the senior career procurement official, within each operating unit that has been delegated contracting authority, who is designated as the Senior Bureau Procurement Official. The BPO must be a procurement professional who has both experience and training in the area of Federal procurement and contracting. HCAs may designate one BPO within their organization to carry out the day-to-day functions of managing the contracting activity. BPOs may also serve as the Head of Contracting Office. The Procurement Executive will issue each BPO a Contracting Officer Warrant which delegates the authority to enter into, administer, and/or terminate contracts and to make related determinations and findings.

1302.170 Abbreviations

AIR Additional Item Requirements
BPO Senior Bureau Procurement Official
CAAC Civilian Agency Acquisition Council
CAM Commerce Acquisition Manual
CAO Chief Acquisition Officer
CAR Commerce Acquisition Regulation
CFO/ASA Chief Financial Officer/Assistant Secretary for Administration
CFR Code of Federal Regulations
CO Contracting Officer
COR Contracting Officer's Representative
DAO Departmental Administrative Order
DOC Department of Commerce
DOO Departmental Organizational Order
D&F Determination and Findings
EVMS Earned Value Management System
FAR Federal Acquisition Regulation
HCA Head of Contracting Activity
HCO Head of Contracting Office
IRB Institutional Review Board
JOFOC Justification for Other than Full and Open Competition
NIST National Institute of Standards and Technology
NOAA National Oceanic and Atmospheric Administration
OCI Organizational Conflict of Interest
OCIO Office of the Chief Information Officer
OFPP Office of Federal Procurement Policy
OIG Office of Inspector General
OMB Office of Management and Budget
OS Office of the Secretary
OSDBU Office of Small and Disadvantaged Business Utilization
PE Procurement Executive
PTO Patent and Trademark Office
RFP Request for Proposals
SBA Small Business Administration
OU Operating Unit

PART 1303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1303.1—Safeguards

Sec.
1303.101 Standards of conduct.
1303.101–2 Solicitation and acceptance of gratuities by government personnel.
1303.101–3 Agency regulations.
1303.104 Procurement integrity.
1303.104–4 Disclosure, protection and marking of contractor bid or proposal information and source selection information.
1303.104–7 Violations or possible violations.

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting suspected violations of the gratuities clause.
1303.204 Treatment of violations.

Subpart 1303.3—Reports of Suspected Antitrust Violations

1303.303 Reporting suspected antitrust violations.

Subpart 1303.4—Contingent Fees

1303.405 Misrepresentations or violations of the covenant against contingent fees.

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.
1303.502–2 Subcontractor kickbacks.

Subpart 1303.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1303.602 Exceptions.

Subpart 1303.7—Voiding and Rescinding Contracts

1303.704 Policy.
1303.705 Procedures.

Subpart 1303.8—Limitation on the Payment of Funds To Influence Federal Transactions

1303.804 Policy.
1303.806 Processing suspected violations.

Subpart 1303.9—Whistleblower Protections for Contractor Employees

1303.905 Procedures for investigating complaints.
1303.906 Remedies.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1303.1—Safeguards

1303.101 Standards of conduct.

1303.101–2 Solicitation and acceptance of gratuities by government personnel.

(a) Suspected violations of the prohibition on soliciting and accepting gratuities shall be reported to the Office of the Inspector General in accordance with DAO 207–10, *Inspector General Investigations.*

(b) To obtain legal advice regarding the solicitation and acceptance of gratuities, contact the Office of the Assistant General Counsel for Administration, Ethics Law and Program Division.

1303.101–3 Agency regulations.

The Department has issued rules implementing Executive Order 11222 prescribing employee standards of conduct (*see* DOC Office of General Counsel Web site).

1303.104 Procurement integrity.

1303.104–4 Disclosure, protection and marking of contractor bid or proposal information and source selection information.

Contractor bid or proposal information and source selection information must be protected from unauthorized disclosure in accordance with FAR Parts 3, 14 and 15, and CAM 1315.3.

1303.104–7 Violations or possible violations.

Suspected violations of the Procurement Integrity Act shall be reported to the individuals designated in CAM 1301.70.

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting suspected violations of the gratuities clause.

Suspected violations of the Gratuities clause shall be reported to the HCA in writing detailing the circumstances. The report must identify the contractor and personnel involved, provide a summary of the pertinent evidence and circumstances that indicate a violation, and include any other available supporting documentation. The HCA will evaluate the report, and, if the allegations appear to support a violation, the matter will be referred to the Head of Contracting Office with copies provided to the Senior Procurement Executive and the DOC Office of Inspector General. *See* DAO 207–10 for procedures.

1303.204 Treatment of violations.

(a) The designee authorized to determine violations of the Gratuities clause is set forth in CAM 1301.70.

(b) Upon receipt of an allegation or evidence of a violation of the Gratuities clause, the designee shall conduct a fact-finding. If there is a basis for further action, a signed notice shall be prepared and sent to the contractor by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. If a reply is not received from the contractor within 45 calendar days of sending the notice, a decision shall be made on the

appropriate action to be taken. If a reply is received from the contractor within 45 calendar days of sending the notice, the information in the reply must be considered before making a decision on the appropriate action to be taken. Upon request of the contractor, the contractor shall be provided an opportunity to appear in person to present information concerning the matter. A report shall be prepared following the presentation and the information must be considered when making a decision. A decision shall be made on the basis of all information available, including findings of fact and oral or written information submitted by the contractor. All mitigating factors shall be considered prior to making a final decision concerning what action will be taken.

Subpart 1303.3—Reports of Suspected Antitrust Violations

1303.303 Reporting suspected antitrust violations.

Suspected anti-competitive practices and antitrust law violations, as described in FAR 3.301 and FAR 3.303, shall be reported to the Contract Law Division, by the HCO. A copy of the report shall be sent to the Procurement Executive concurrently with the submission to the Office of the Assistant General Counsel for Administration, Ethics Law and Program Division. The Office of the Assistant General Counsel will submit any required reports to the Attorney General.

Subpart 1303.4—Contingent Fees

1303.405 Misrepresentations or violations of the covenant against contingent fees.

If the contracting officer has specific evidence or other reasonable basis to believe that a violation of the Covenant Against Contingent Fees has occurred, the matter shall be referred to the HCO, who shall, in appropriate circumstances, take one or more of the actions described in FAR 3.405(b). The HCO shall also refer the matter to the DOC Office of the Inspector General as well as the Office of the Assistant General Counsel for Administration, Ethics Law and Program Division. The Office of the Assistant General Counsel for Administration, Ethics Law and Program Division shall refer the matter to the Department of Justice, as appropriate.

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.

1303.502–2 Subcontractor kickbacks.

Suspected violations of the Anti-Kickback Act of 1986 shall be reported to the DOC Office of Inspector General.

Subpart 1303.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1303.602 Exceptions.

The designee authorized to make an exception to the policy in FAR 3.601 is set forth in CAM 1301.70.

Subpart 1303.7—Voiding and Rescinding Contracts

1303.704 Policy.

The designee authorized to declare void and rescind contracts, in cases in which there has been a final conviction for any violation of 18 U.S.C. 201–224, is set forth in CAM 1301.70.

1303.705 Procedures.

The designee authorized to declare a contract void and rescinded is set forth in CAM 1301.70. The DOC will follow the procedures set forth in FAR 3.705.

Subpart 1303.8—Limitation on the Payment of Funds To Influence Federal Transactions

1303.804 Policy.

The original OMB Form LLL, Disclosure of Lobbying Activities, shall be retained in the contract file and a copy shall be submitted to the Office of the Assistant General Counsel for Administration, Ethics Law and Program Division.

1303.806 Processing suspected violations.

Suspected violations of 31 U.S.C. 1352 shall be referred to the DOC Office of Inspector General and the Senior Procurement Executive.

Subpart 1303.9—Whistleblower Protections for Contractor Employees

1303.905 Procedures for investigating complaints.

The designee authorized to take specified actions related to Inspector General findings regarding whistleblower complaints of contractor employees is set forth in CAM 1301.70.

1303.906 Remedies.

The designee authorized to determine whether a contractor has subjected an employee to reprisal and to determine the appropriate remedy is set forth in CAM 1301.70.

PART 1304—ADMINISTRATIVE MATTERS

Subpart 1304.2—Contract Distribution

Sec.
1304.201 Procedures
1304.201–70 Accountable personal property.

Subpart 1304.6—Contract Reporting

1304.602 General
1304.602–70 Federal Procurement Data System.

Subpart 1304.8—Government Contract Files

1304.804 Closeout of contract files
1304.804–70 Contract closeout procedures.
1304.805 Storage, handling, and disposal of contract files.
1304.805–70 Storage, handling, and disposal of contract files.

Subpart 1304.13—Personal Identity Verification

1304.1301 Policy.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1304.2—Contract Distribution

1301.201 Procedures.

1304.201–70 Accountable personal property.

Provide one copy of all contracts and purchase orders for accountable personal property to the appropriate Departmental property management office(s) for inclusion in the Department's personal property system in accordance with the DOC Personal Property Management Manual. Accountable personal property purchased with a Governmentwide commercial purchase card is also to be reported to the property management office.

Subpart 1304.6—Contract Reporting

1304.602 General.

1304.602–70 Federal Procurement Data System.

Departmental Federal Procurement Data System reporting procedures are set forth in CAM 1304.602.

Subpart 1304.8—Government Contract Files

1304.804 Closeout of contract files.

1304.804–70 Contract closeout procedures.

CAM 1304.804 supplements FAR 4.804 with the Department's contract closeout procedures.

1304.805 Storage, handling, and disposal of contract files.

1304.805–70 Storage, handling, and disposal of contract files.

CAM 1304.804 supplements FAR 4.805 with the Department's procedures for storage, handling, and disposal of contract files.

Subpart 1304.13—Personal Identity Verification

1304.1301 Policy.

(a) Implementation of Federal Information Processing Standards Publication (FIPS PUB) 201 and OMB guidance M–05–24 is set forth in DOC Personal Identify Verification (PIV) Implementation Guidance, which is available on the Office of Security Web site.

(b) The DOC official responsible for verifying contractor employee personal identity is set forth in the DOC Personal Identify Verification (PIV) Implementation Guidance.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 1305—PUBLICIZING CONTRACT ACTIONS

Subpart 1305.2—Synopses of Proposed Contract Actions.

Sec.
1305.202 Exceptions.

Subpart 1305.4—Release of Information

1305.403 Requests from Members of Congress.
1305.404 Release of long range acquisition estimates.
1305.404–1 Release procedures.

Subpart 1305.5—Paid Advertisements

1305.502 Authority.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1305.2—Synopses of Proposed Contract Actions

1305.202 Exceptions.

The designee authorized to decide, in writing, that advance notice through the GPE (Governmentwide Point of Entry) is not appropriate or reasonable is set forth in CAM 1301.70.

Subpart 1305.4—Release of Information

1305.403 Requests from Members of Congress.

Requests from Members of Congress shall be handled in accordance with the policies and procedures outlined in DAO 218–2.

1305.404 Release of long-range acquisition estimates.

1305.404–1 Release procedures.

The designee authorized to release long-range acquisition estimates is set forth in CAM 1301.70.

Subpart 1305.5—Paid Advertisements

1305.502 Authority.

The designee authorized to provide authorization for publication of paid advertisements in newspapers is set forth in CAM 1301.70. The contracting officer shall obtain written authorization from the designee.

PART 1306—COMPETITION REQUIREMENTS

Subpart 1306.2—Full and Open Competition after Exclusion of Sources

Sec.
1306.202 Establishing or maintaining alternative sources.

Subpart 1306.3—Other Than Full and Open Competition

1306.302 Circumstances permitting other than full and open competition.
1306.302–5 Authorized or required by statute.
1306.303 Justification.
1306.303–70 Documentation and legal review of justifications.
1306.304 Approval of the justification.

Subpart 1306.5—Competition Advocates

1306.501 Requirement.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1306.2—Full and Open Competition After Exclusion of Sources

1306.202 Establishing or maintaining alternative sources.

The authority to exclude a source from a contract action in order to establish or maintain an alternate source is set forth in CAM 1301.70

Subpart 1306.3—Other Than Full and Open Competition

1306.302 Circumstances permitting other than full and open competition.

1306.302–5 Authorized or required by statute.

In accordance with Executive Order 13457, a sole source acquisition may not be justified on the basis of any earmark included in any non-statutory source, except when otherwise required by law or when an earmark meets the criteria for funding set out in Executive Order 13457.

1306.303 Justifications.

1306.303–70 Documentation and legal review of justifications.

The justification for providing for other than full and open competition in accordance with FAR 6.303–2 shall be provided on Form CD–492, *Justification for Other than Full and Open Competition*. If the estimated value of the procurement is over legal review thresholds, concurrence by the Procurement Counsel is required.

1306.304 Approval of the justification.

The designee authorized to approve justifications for other than full and open competition at the dollar thresholds in FAR 6.304 is set forth in CAM 1301.70.

Subpart 1306.5—Competition Advocates

1306.501 Requirement.

The designee authorized to designate a Competition Advocate for the Department and each procuring activity is set forth in CAM 1301.70.

PART 1307—ACQUISITION PLANNING

Subpart 1307.1—Acquisition Plans

Sec.
1307.102 Policy.
1307.103 Agency head responsibilities.
1307.105 Contents of written acquisition plans.

Subpart 1307.3—Contractor versus Government Performance

1307.302 Policy.

Subpart 1307.5—Inherently Governmental Functions

1307.503 Policy.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1307.1—Acquisition Plans

1307.102 Policy.

In accordance with FAR 7.102, it is the Department's policy to perform acquisition planning and conduct market research in order to promote the acquisition of commercial items and provide for full and open competition.

1307.103 Agency-head responsibilities.

The designee authorized as responsible for compliance with FAR 7.103 is set forth in CAM 1301.70.

1307.105 Contents of written acquisition plans.

Information on the contents of Acquisition Plans is set forth in CAM 1307.1

Subpart 1307.3—Contractor versus Government Performance

1307.302 Policy.

The Department's competitive sourcing policy and procedures are set forth in CAM 1307.370.

Subpart 1307.5—Inherently Governmental Functions

1307.503 Policy.

All procurement request packages submitted by program offices to initiate a procurement action for services shall contain a written determination by the designated requirements official that affirms that none of the functions to be performed in the statement of work are inherently governmental. This policy applies to all services other than personal services issued under statutory authority. If the contracting officer determines that there are substantial questions whether the work statement involves performance of inherently governmental functions, the contracting officer shall submit the matter for review by Procurement Counsel. Disagreements regarding the determination shall be resolved by the Head of Contracting Office (HCO) after consultation with counsel.

PART 1308—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1308.8—Acquisition of Printing and Related Supplies

Sec.
1308.802 Policy.
1308.802–70 Printing.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1308.8—Acquisition of Printing and Related Supplies

1308.802 Policy.

The designee authorized as the Department's central printing authority is set forth in CAM 1301.70.

1308.802–70 Printing.

Insert clause 1352.208–70, *Restrictions on Printing and Duplicating,* in all solicitations and contracts when printing documents may be required in the performance of the contract.

PART 1309—CONTRACTOR QUALIFICATIONS

Subpart 1309.2—Qualifications Requirements

Sec.
1309.202 Policy.
1309.206 Acquisitions subject to qualification requirements.
1309.206–1 General.

Subpart 1309.4—Debarment, Suspension, and Ineligibility

1309.403 Definitions.
1309.405 Effect of listing.
1309.405–1 Continuation of current contracts.
1309.405–2 Restrictions on subcontracting.
1309.406 Debarment.
1309.406–1 General.
1309.406–3 Procedures.
1309.407 Suspension.
1309.407–1 General.
1309.407–3 Procedures.

Subpart 1309.5—Organizational and Consultant Conflicts of Interest

1309.503 Waiver.
1309.503–70 Waiver.
1309.506 Procedures.
1309.507 Solicitation provisions and contract clauses.
1309.507–1 Solicitation provisions.
1309.507–2 Contract clauses.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1309.2—Qualifications Requirements

1309.202 Policy.

(a) The designee authorized to establish qualification requirements is set forth in CAM 1301.70.

(b) The designee authorized to waive the requirements of FAR 9.202 (a)(1)(ii) through (4) for up to 2 years with respect to the item subject to the qualification requirement is set forth in CAM 1301.70. This waiver authority does not apply to the qualification requirements contained in a qualified product list, qualified manufacturer list, or qualification bidders list.

(c) The designee authorized to approve proceeding with a procurement, rather than delay the award in order to provide a potential offeror an opportunity to demonstrate its ability to meet the standards specified in the qualifications, is set forth in CAM 1301.70.

1309.206 Acquisitions subject to qualification requirements.

1309.206–1 General.

When the designee authorized in CAM 1301.70 determines that an emergency exists, or elects before or after award not to enforce a qualification requirement it had established, the qualification requirement may not be thereafter enforced unless the agency complies with FAR 9.202(a).

Subpart 1309.4—Debarment, Suspension, and Ineligibility

1309.403 Definitions.

The designees authorized as the Debarring and Suspending Officials are set forth in CAM 1301.70.

1309.405 Effect of listing.

(a) Contracting officers shall review the Excluded Parties List System (EPLS) listing for contractors after the opening of bids or receipt of proposals and, again, immediately prior to award.

(b) The designee authorized to determine that a compelling reason exists to do business with a debarred/suspended contractor is set forth in CAM 1301.70. This designation does not apply to FAR 23.506(e).

1309.405–1 Continuation of current contracts.

(a) The designee authorized to direct the discontinuance of a contract or subcontract because of a debarment, suspension or proposed debarment is set forth in CAM 1301.70.

(b) A written determination must be issued by the designee authorized in CAM 1301.70 before the following actions can be taken with a contractor that is debarred, suspended or proposed for debarment:

(1) Place any orders exceeding the maximum on an indefinite delivery contract;

(2) Place orders under Federal supply schedule contracts, blanket purchase orders or basic ordering agreements; or

(3) Add new work or exercise options that extend the duration of a current contract or order.

1309.405–2 Restrictions on subcontracting.

The designee authorized to provide, in writing, compelling reasons for allowing Government consent to subcontracts with a contractor who is debarred, suspended or proposed for debarment is set forth in CAM 1301.70.

1309.406 Debarment.

1309.406–1 General.

Debarments and proposed debarments shall be effective throughout the Executive branch of the Government unless the designee authorized in CAM 1301.70 states in writing compelling reasons justifying DOC doing business with the contractor.

1309.406–3 Procedures.

(a) *Investigation and referral.* DOC employees shall immediately refer any cause that might serve as the basis for debarment through the contracting officer to the debarring official.

(b) *Decision-making process.* (1) Procedures shall afford the contractor, and any named affiliates, an opportunity to submit information and argument in opposition to the proposed debarment. This may be done in person, in writing or through a representative.

(2) In actions not based upon a conviction or civil judgment, where the

contractor's submission raises a genuine dispute over facts material to the proposed debarment, the following procedures will be followed:

(i) Provide the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses and confront any person the agency presents;

(ii) A transcribed record of the proceeding will be made, unless the agency and contractor mutually agree to waive the requirement for a transcript. This transcribed record is available to the contractor at cost.

(c) *Notice of proposal to debar.* A notice of proposed debarment shall be issued by the debarring official in accordance with FAR 9.406–3(c)(1) through (7).

(d) *Debarring official's decision.* (1) For actions based upon a conviction or civil judgment, or when there is no authentic dispute over material facts, the debarring official's decision shall be based on all of the information in the administrative record plus any contractor-submitted data. If there is no suspension in effect, the decision shall be rendered within 30 working days after receipt of any information and argument submitted by the contractor. The debarring official can extend this timeframe for good cause.

(2)(i) When necessary, written findings of fact shall be prepared as to disputed material facts. The debarring official will utilize the information in the written findings of fact, the data submitted by the contractor plus any other information in the administrative record to develop the decision.

(ii) While the debarring official may refer matters involving disputed material facts to another official for findings of fact, the debarring official can disregard any such findings in whole or in part upon a determination that they are clearly erroneous.

(iii) After the conclusion of proceedings with respect to disputed facts, the debarring official will make a decision.

(3) When the proposed debarment is not based upon a conviction or civil judgment, the reason for debarment must be based on a preponderance of the evidence.

(e) *Notice of debarring official's decision.* FAR 9.406–3(e)(1) establishes the notification procedures when a debarment has been imposed, while FAR 9.406–3(e)(2) establishes the procedure when a debarment is not imposed.

(f) Procurement counsel shall assist and advise the debarring official at each stage of the decision-making process.

1309.407 Suspension.

1309.407–1 General.

Suspensions shall be effective throughout the executive branch of the Government, unless the designee set forth in CAM 1301.70 states in writing compelling reasons for continuing to do business with a suspended contractor.

1309.407–3 Procedures.

(a) *Investigation and referral.* DOC employees shall immediately refer any cause that might serve as the basis for suspension through the contracting officer to the suspending official.

(b) *Decision-making process.* (1) Procedures shall afford the contractor, and any named affiliates, an opportunity to submit information and argument in opposition to the proposed suspension. This may be done in person, in writing or through a representative.

(2) In actions not based upon an indictment, where the contractor's submission raises a genuine dispute over facts material to the proposed suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the following procedures will be followed:

(i) Provide the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses and confront any person the agency presents;

(ii) A transcribed record of the proceeding will be made, unless the agency and contractor mutually agree to waive the requirement for a transcript. This transcribed record is available to the contractor at cost.

(c) *Notice of suspension.* A notice of suspension shall be issued by the suspending official in accordance with FAR 9.407–3(c)(1) through (6).

(d) *Suspending official's decision.* (1) For actions based upon an indictment, when there is no authentic dispute over material facts, in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official's decision shall be based on all of the information in the administrative record plus any contractor-submitted data.

(2)(i) When necessary, written findings of fact shall be prepared as to the disputed material facts. The suspending official will utilize the information in the written findings of fact, the data submitted by the contractor plus any other information in the administrative record to develop the decision.

(ii) While the suspending official may refer matters involving disputed material facts to another official for findings of fact, the suspending official can disregard any such findings in whole or in part upon a determination that they are clearly erroneous.

(iii) After the conclusion of proceedings with respect to disputed facts, the suspending official will make a decision.

(3) The suspension may be modified or terminated by the suspending official. However such a decision shall be without prejudice to the subsequent imposition of:

(i) Suspension by any other agency; or

(ii) Debarment by any agency.

(4) The suspending official's decision shall be sent to the contractor and any affiliates involved, in writing, by certified mail, return receipt requested.

(e) Procurement counsel shall assist and advise the suspending official at each stage of the decision-making process.

Subpart 1309.5—Organizational and Consultant Conflicts of Interest

1309.503 Waiver.

1309.503–70 Waiver.

(a) The need for a waiver of an organizational conflict of interest (OCI) may be identified by the contracting officer or by a written request submitted by an offeror or contractor. The contracting officer shall review all of the relevant facts and shall refer the matter to the Senior Bureau Procurement Official, who shall make a written recommendation to the Head of Contracting Activity whether a waiver should be granted to allow for a contract award or for continuation of an existing contract.

(b) Criteria for Waiver of OCIs. Issuance of a waiver shall be limited to those situations in which:

(1) The work to be performed under contract is vital to the agency;

(2) There is no party other than the conflicted party that can perform the contract at issue; and

(3) Contractual and/or technical review and supervision methods cannot be employed to mitigate the conflict.

1309.506 Procedures.

The contracting officer shall resolve an actual or potential OCI in a manner consistent with the approval or direction of the designee authorized in CAM 1301.70. If the responsible contracting officer is also the authorized designee in CAM 1301.70, the contracting officer must obtain approval

from the Senior Bureau Procurement Official.

1309.507 Solicitation provisions and contract clauses.

1309.507–1 Solicitation provisions.

(a) Insert provision 1352.209–70, *Potential Organizational Conflict of Interest,* substantially as written, in solicitations when the contracting officer determines there is a potential organizational conflict of interest.

(b) Insert the clause with its Alternate I when the contracting officer determines the basic clause should not be modified.

1309.507–2 Contract clauses.

(a) In accordance with FAR 9.507–2, insert clause 1352.209–71, *Limitation of Future Contracting,* substantially as written, when the contractor's eligibility for future prime contract or subcontract awards shall be restricted because of services being provided as stated in FAR 9.505–1 through 9.505–4.

(1) Insert the basic clause when the contractor will be providing systems engineering and/or technical direction. (*See* FAR 9.505–1)

(2) Insert the clause with its Alternate I when the contractor will be preparing specifications or work statements. (*See* FAR 9.505–2)

(3) Insert the clause with its Alternate II when the contractor will be providing technical evaluation or advisory and assistance services. (*See* FAR 9.505–3)

(4) Insert the clause with its Alternate III when the contractor will be obtaining access to proprietary information. (*See* FAR 9.505–4)

(5) Insert the clause with its Alternate IV when the contract is a task order contract. The contracting officer may modify Alternate IV to include a list of systems for which task orders may be issued and indicate which organizational conflict of interest provision in paragraph (a)(2) of this clause shall apply.

(6) Insert the clause with its Alternate V when the contract provides for delivery orders. The contracting officer shall indicate in each delivery order which organizational conflict of interest provision in paragraph (a)(2) of this clause shall apply.

(7) Insert the language in Alternate VI when it is necessary to have the restrictions of this clause included in all or some subcontracts, teaming arrangements, and other agreements calling for performance of work related to the contract.

(b) Insert clause 1352.209–72, *Restrictions against Disclosure,* in service contracts, including architect-engineer contracts, and supply and construction contracts requiring a restriction on the release of information developed or obtained in connection with performance of the contract.

(c) Insert the clause 1352.209–73, *Compliance with the Laws,* in all solicitations and contracts.

(d) Insert the clause 1352.209–74, *Organizational Conflict of Interest,* in all solicitations and contracts.

(e) Insert clause 1352.209–75, *Title 13 and Non-Disclosure Requirements,* in all solicitations and contracts for services where the contractor will have access to Title 13 data.

PART 1311—DESCRIBING AGENCY NEEDS

Subpart 1311.1—Selecting and Developing Requirements Documents

Sec.
1311.103 Market acceptance.

Subpart 1311.5—Liquidated Damages

1311.501 Policy.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1311.1—Selecting and Developing Requirements Documents

1311.103 Market acceptance.

The designee authorized as the head of the agency is set forth in CAM 1301.70.

Subpart 1311.5—Liquidated Damages

1311.501 Policy.

The designee authorized as the head of the agency is set forth in CAM 1301.70.

PART 1312—ACQUISITION OF COMMERCIAL ITEMS

Subpart 1312.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.
1312.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1312.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

1312.302 Tailoring of provisions and clauses for the acquisition of commercial items.

The authority for approving a request for waiver to tailor a clause, or otherwise include any additional terms or conditions in a solicitation or contract in a manner that is inconsistent with customary commercial practice, is set forth in CAM 1301.70.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1313—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 1313.1—Procedures

Sec.
1313.106 Soliciting competition, evaluation of quotations or offers, award and documentation.
1313.106–2–70 Evaluation of solicitations.

Subpart 1313.2—Actions At or Below the Micro Purchase Threshold

1313.201 General.

Subpart 1313.3—Simplified Acquisitions Methods

1313.301 Governmentwide commercial purchase card.
1313.302 Purchase orders.
1313.302–1–70 Non-commercial purchase orders.
1313.302–3 Obtaining contractor acceptance and modifying purchase orders.
1313.303 Blanket purchase agreements (BPAs).
1313.303–5 Purchases under BPAs.
1313.305 Imprest funds and third party drafts.
1313.305–1 General.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1313.1—Procedures

1313.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

1313.106–2–70 Evaluation of solicitations.

All solicitations using simplified acquisition procedures in FAR Part 13 must include provision 1352.213–70, *Evaluation Utilizing Simplified Acquisition Procedures,* or similar language setting out evaluation criteria.

Subpart 1313.2—Actions At or Below the Micro Purchase Threshold

1313.201 General.

DOC employees, other than warranted contracting officers, must be delegated micro-purchase authority by the designee set forth in CAM 1301.70 according to FAR 1.603–3(b), and must be trained pursuant to CAM 1313.301.

Subpart 1313.3—Simplified Acquisitions Methods

1313.301 Governmentwide commercial purchase card.

The Department's procedures for the use and control of the Governmentwide commercial purchase card are set forth in CAM 1313.301.

1313.302 Purchase orders.

1313.302–1–70 Non-commercial purchase orders.

Insert provision 1352.213–71, *Instructions for Submitting Quotations under the Simplified Acquisition Threshold—Non-Commercial,* or similar language in all solicitations for non-commercial purchase orders under the simplified acquisition threshold. The contracting officer shall indicate whether electronic submissions of quotations will be accepted. Paragraph (b)(4) of provision 1352.213–71 may be tailored based on the evaluation factors.

1313.302–3 Obtaining contractor acceptance and modifying purchase orders.

A contractor's written acceptance of a purchase order modification is required, unless the contracting officer determines otherwise.

1313.303 Blanket Purchase Agreements (BPAs).

1313.303–5 Purchases under BPAs.

(a) Individual purchases shall not exceed the simplified acquisition threshold, subject to the following:

(1) The limitations for individual purchases against BPAs established against Federal Supply Schedule contracts shall be those set forth in the terms and conditions of the schedule contract.

(2) The limitations for individual purchases for commercial item acquisitions against BPAs established under FAR Subpart 13.5 "Test Program for Certain Commercial Items" is the simplified acquisition threshold set forth in FAR Subpart 13.5.

1313.305 Imprest funds and third party drafts.

1313.305–1 General.

(a) *Third-party drafts.* Third-party drafts are not authorized for use by Department of Commerce agencies.

(b) *Imprest Funds.* The *Imprest Fund Policy Directive,* issued November 9, 1999, by the Department of Treasury, required that all Federal agencies eliminate agency use of imprest funds by October 1, 2001, except where provided under the *Imprest Fund Policy Directive.* Requests for exceptions to the requirements of the Imprest Fund Policy Directive should be addressed to DOC's Director of Financial Management. In the case of an approved exception, DOC's procedures for using imprest funds can be found in the Cash Management Policies and Procedures Handbook, available at the Department of Commerce, Office of Financial Management Web site. A copy of all approved exceptions shall be submitted to the Senior Bureau Procurement Official.

PART 1314—SEALED BIDDING

Subpart 1314.2—Solicitation of Bids

Sec.
1314.201 Preparation of invitation for bids.
1314.201–7 Contract clauses.

Subpart 1314.4—Opening of Bids and Awards of Contracts

1314.404 Rejection of bids.
1314.404–1 Cancellation of invitations after opening.
1314.407 Mistakes in bids.
1314.407–3 Other mistakes disclosed before award.
1314.409 Information to bidders.
1314.409–1 Award of unclassified contracts.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1314.2—Solicitation of Bids

1314.201 Preparation of invitation for bids.

1314.201–7 Contract clauses.

The designee authorized to waive the requirement for inclusion of FAR clause 52.214–27 "Price Reduction for Defective Cost and Pricing Data—Modifications—Sealed Bidding" in a contract with a foreign government or agency of that government is set forth in CAM 1301.70.

Subpart 1314.4—Opening of Bids and Awards of Contracts

1314.404 Rejection of bids.

1314.404–1 Cancellation of invitations after opening.

The designee authorized to make the determinations prescribed in FAR 14.401–1(c) and (f) are set forth in CAM 1301.70.

1314.407 Mistakes in bids.

1314.407–3 Other mistakes disclosed before award.

The designee authorized to make the determinations prescribed in FAR 14.407–3(a), (b), (c) and (d) is set forth in CAM 1301.70. Concurrence of Procurement Counsel shall be obtained before issuance of any determination under this section.

1314.409 Information to bidders.

1314.409–1 Award of unclassified contracts.

Requests for records shall be governed by the procedures outlined in DAO 205–14 and 15 CFR Part 4.

PART 1315—CONTRACTING BY NEGOTIATION

Subpart 1315.2—Solicitation and Receipt of Proposals and Information

Sec.
1315.204 Contract format.
1315.204–570 Part IV representations and instructions.
1315.209 Solicitation provisions and contract clauses.

Subpart 1315.3—Source Selection

1315.303 Responsibilities.
1315.305 Proposal evaluation.

Subpart 1315.4—Contract Pricing

1315.407 Special cost or pricing areas.
1315.407–4 Should-cost review.

Subpart 1315.6—Unsolicited Proposals

1315.602 Policy.
1315.603 General.
1315.604 Agency points of contact.
1315.606 Agency procedures.
1615.606–2 Evaluation.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1315.2—Solicitation and Receipt of Proposals and Information

1315.204 Contract format.

The designee authorized to grant exemptions from the uniform contract format is set forth in CAM 1301.70.

1315.204–570 Part IV representations and instructions.

(a) *Section L, Instructions, conditions, and notices to offerors or respondents.* (1) The contracting officer shall insert the provision 1352.215–70, *Proposal Preparation,* in all solicitations. Contracting officers should tailor the provision to best meet the Government's needs. Information requested from offerors in Volume II–Technical Proposal, must correspond to the evaluation factors. Contracting officers should not request information that will not be evaluated in accord with the stated technical evaluation factors. Should electronic submission be allowed by the CO, specific instructions must be added.

(2) Insert a provision similar to 1352.215–71, *Instructions for Oral Presentations,* in solicitations when oral presentations will be used. Contracting officers shall tailor the provision to suit their acquisition.

(3) The contracting officer shall insert the provision 1352.215–72, *Inquiries,* in solicitations as determined by the CO. This provision may be modified to satisfy the needs of specific procurements.

(b) *Section M, Evaluation factors for award.* (1) The contracting officer shall insert provision 1352.215–73, *Evaluation Quantities-Indefinite*

Quantity Contract, in solicitations for indefinite quantity and requirements contracts, as appropriate. This provision may be modified to satisfy the needs of specific procurements.

(2) The contracting officer shall insert the provision similar to 1352.215–74, *Best Value Evaluation,* for competitive, best value procurements, tailoring the language as appropriate. If clause 1352.215–74, *Best Value Evaluation,* is used, then clause 1352.215–75 *Evaluation Criteria,* must be used.

(3) The contracting officer shall insert a provision in all solicitations similar to 1352.215–75, *Evaluation Criteria,* to specify evaluation criteria, tailoring the language as appropriate. If the basis for award is lowest price technically acceptable, this must be stated.

(4) The contracting officer shall insert provision 1352.215–76, *Cost or Pricing Data,* in all solicitations when cost or pricing data is required under FAR subpart 15.4.

1315.209 Solicitation provisions and contract clauses.

The designee authorized to waive the examination of records by the Comptroller General is set forth in CAM 1301.70.

Subpart 1315.3—Source Selection

1315.303 Responsibilities.

The contracting officer is designated as the source selection authority for competitive negotiated acquisitions of less than $10,000,000. The source selection authority for large dollar competitive negotiated acquisitions of $10,000,000 or more is the head of the operating unit. The head of the operating unit may re-delegate the authority to a Department manager who is at an organizational level above the contracting officer and who has sufficient rank and professional experience to effectively carry out the functions of a source selection authority.

1315.305 Proposal evaluation.

At the discretion of the contracting officer, cost information may be provided to members of the technical evaluation team.

Subpart 1315.4—Contract Pricing

1315.407 Special cost or pricing areas.

1315.407–4 Should-cost review.

The should-cost review report shall include all elements listed in FAR 15.407–4(a)(1) and be provided to the contracting officer for use in negotiations.

Subpart 1315.6—Unsolicited Proposals

1315.602 Policy.

In accord with FAR 16.602, the DOC encourages the submission of new and innovative ideas which support the DOC mission.

1315.603 General.

DOC will accept for review and consideration unsolicited proposals from any entity. DOC will not pay any costs associated with the preparation of unsolicited proposals. Proposals which do not meet the definition and applicable content and marking requirements of FAR 15.6 will not be considered under any circumstances and will be returned to the submitter. Unsolicited proposals may not be submitted electronically.

1315.604 Agency points of contact.

(a) Unsolicited proposals are to be submitted to the appropriate DOC contracting office. Any person or entity considering the submission of an unsolicited proposal should first determine, based on the subject matter of the proposal, to which DOC operating unit the proposal applies. Proposers should contact the applicable operating unit contracting office to determine procedures for submission and to whom to send the proposal.

(b) Program offices must immediately transmit any unsolicited proposals sent to them to their contracting office. If there is a question concerning which operating unit should evaluate an unsolicited proposal, the contracting office shall identify the proper office, in coordination with the Office of Acquisition Management, if necessary, and transmit the proposal to the applicable contracting office.

1315.606 Agency procedures.

(a) The operating unit contracting office is designated as the point of contact for receipt of unsolicited proposals. Persons within DOC (*e.g.* technical personnel) who receive unsolicited proposals shall forward all documents to their cognizant contracting office.

(b) Within ten working days after receipt by the contracting office of an unsolicited proposal, the contracting office shall review the proposal and determine whether the proposal meets the content and marking requirements of FAR 15.6. If the proposal does not meet these requirements, it shall be returned to the submitter, giving the reasons for noncompliance.

1315.606–2 Evaluation.

(a) If the contracting officer determines, upon initial review, that the unsolicited proposal meets all criteria in FAR 15.606–1, the contracting officer will acknowledge receipt of the proposal, coordinate evaluation with the program office, and provide to the submitter an estimated date that evaluation of the proposal is expected to be completed. The contracting officer shall transmit the proposal to the program office for evaluation, marking it in accord with FAR 15.609(d). If the estimated date for completion of the evaluation cannot be met, the submitter should be informed in a timely manner and provided with a revised evaluation completion date.

(b) The evaluating office shall not reproduce or disseminate the proposal to other offices without the consent of the contracting officer. If the evaluating office requires additional information from the proposer, the evaluator shall request the information through the contracting officer, who will contact the proposer. The evaluator shall not communicate directly with the proposer.

(c) Evaluators shall notify the contracting officer of their recommendations when the evaluation is complete. Following evaluation, the contracting officer shall proceed in accord with FAR 15.607.

PART 1316—TYPES OF CONTRACTS

Subpart 1316.1—Selecting Contract Types

Sec.

1316.103 Negotiating contract type.
1316.103–70 Identifying contract type.

Subpart 1316.2—Fixed-Price Contracts

1316.203 Fixed-price contracts with economic price adjustment.
1316.203–4 Contract clauses.
1316.206 Fixed-ceiling-price contracts with retroactive price redetermination.
1316.206–3 Limitations.

Subpart 1316.3—Cost-Reimbursement Contracts

1316.307 Contract clauses.

Subpart 1316.4—Incentive Contracts

1316.405 Cost-reimbursement incentive contracts.
1316.405–2 Cost-plus-award-fee contracts.
1316.406 Contract clauses.

Subpart 1316.5—Indefinite-Delivery Contracts

1316.501–2–70 Task orders.
1316.505 Ordering.
1316.506 Solicitation provisions and contract clauses.

Subpart 1316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1316.601 Time-and-materials contracts.
1316.601–70 Contract clauses.
1316.602 Labor-hour contracts.
1316.602–70 Contract clauses.
1316.603 Letter contracts.

1316.603–2 Application.
1316.603–3 Limitations.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1316.1—Selecting Contract Types

1316.103 Negotiating contract type.

1316.103–70 Identifying contract type.

The type of contract shall be stated in each contract awarded.

Subpart 1316.2—Fixed-Price Contracts

1316.203 Fixed-price contracts with economic price adjustment.

1316.203–4 Contract clauses.

Contracting officers shall use an economic price adjustment clause based on cost indexes of labor or material after obtaining approval for use of the clause from the head of the contracting office.

1316.206 Fixed-ceiling-price contract with retroactive price redetermination.

1316.206–3 Limitations.

The designee authorized to approve use of fixed-ceiling-price contracts with retroactive price redetermination is set forth in CAM 1301.70.

Subpart 1316.3—Cost-Reimbursement Contracts

1316.307 Contract clauses.

(a) Insert a clause that is substantially the same as 1352.216–70, *Estimated and Allowable Costs,* in all cost-reimbursement contracts.

(b) Insert a clause similar to 1352.216–71, *Level of Effort (Cost-Plus-Fixed-Fee, Term Contract),* in Cost-Plus-Fixed-Fee, Level of Effort contracts.

Subpart 1316.4—Incentive Contracts

1316.405 Cost-reimbursement incentive contracts.

1316.405–2 Cost-plus-award-fee contracts.

Insert clause 1352.216–72, *Determination of Award Fee,* in all cost-plus-award-fee contracts.

1316.406 Contract clauses.

Insert a clause substantially the same as 1352.216–73, *Distribution of Award Fee,* in all cost-plus-award-fee solicitations and contracts, as determined by the contracting officer.

Subpart 1316.5—Indefinite-Delivery Contracts

1316.501–2–70 Task orders.

Insert clause 1352.216–74, *Task Orders,* or a substantially similar clause in task order solicitations and contracts, making changes, as appropriate. Contracting officers are encouraged to make appropriate modifications to the time requirements and procedures to meet the Government's needs.

1316.505 Ordering.

The department's Task and Delivery Order Ombudsman is designated in CAM 1301.70.

1316.506 Solicitation provisions and contract clauses.

(a) Insert clause 1352.216–75, *Minimum and Maximum Contract Amounts,* in all indefinite quantity contracts, including requirements contracts, if feasible.

(b) Insert a clause similar to 1352.216–76, *Placement of Orders,* in indefinite-delivery solicitations and contracts.

Subpart 1316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1316.601 Time-and-materials contracts.

The designee authorized to approve a time-and-materials contract prior to the execution of the base period when the base period plus any option periods exceeds three years is set forth in CAM 1301.70.

1316.601–70 Contract clauses.

Insert clause 1352.216–77, *Ceiling Price,* in all time-and-materials contracts.

1316.602 Labor-hour contracts.

1316.602–70 Contract clauses.

Insert clause 1352.216–77, *Ceiling Price,* in all labor-hour contracts, including, if feasible, requirements contracts.

1316.603 Letter contracts.

1316.603–2 Application.

(a) With the written approval from the authorized designee in CAM 1301.70, in extreme cases, the contracting officer may authorize an additional period for contract definitization.

(b) If, after exhausting all reasonable efforts, the contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement as to price or fee, the contracting officer may determine a reasonable price or fee with approval from the authority designated in CAM 1301.70.

1316.603–3 Limitations.

The designee authorized to determine that a letter contract is suitable so that work can begin immediately is set forth in CAM 1301.70.

PART 1317—SPECIAL CONTRACTING METHODS

Subpart 1317.1—Multi-Year Contracting

Sec.
1317.104 General.
1317.105 Policy.
1317.105–1 Uses.
1317.108 Congressional notification.

Subpart 1317.2—Options

1317.203 Solicitations.

Subpart 1317.5—Interagency Acquisitions Under the Economy Act

1317.502 General.
1317.502–70 Policy.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1317.1—Multi-Year Contracting

1317.104 General.

The designee authorized to modify requirements of FAR Subpart 17.1 and FAR 52.217–2 is set forth in CAM 1301.70.

1317.105 Policy.

1317.105–1 Uses.

The designee authorized to make the determination to enter into a multi-year contract is set forth in CAM 1301.70.

1317.108 Congressional notification.

Written notification to Congress shall be handled in accordance with the policies and procedures outlined in DAO 218–2.

Subpart 1317.2—Options

1317.203 Solicitations.

The designee authorized to limit option quantities for additional supplies greater than 50 percent of the initial quantity of the same contract line item is set forth in CAM 1301.70.

Subpart 1317.5—Interagency Acquisitions Under the Economy Act

1317.502 General.

1317.502–70 Policy.

All Interagency Acquisitions shall adhere to the policy set forth in CAM 1317.570.

PART 1318—EMERGENCY ACQUISITIONS

Subpart 1318.2—Emergency Acquisition Flexibilities

Sec.
1318.201 Contingency operation.
1318.202 Defense or recovery from certain attacks.
1318.270 Emergency acquisition flexibilities.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1318.2—Emergency Acquisition Flexibilities

1318.201 Contingency operation.

The designee authorized to serve as the Head of the Agency under FAR 18.201(b) and (c) is set forth in CAM 1301.70.

1318.202 Defense or recovery from certain attacks.

The designee authorized to serve as the Head of the Agency under FAR 18.202(a), (b) and (c) is set forth in CAM 1301.70.

1318.270 Emergency acquisition flexibilities.

(a) *Authorizing emergency acquisition flexibilities.* The process for authorizing the use of emergency procurement flexibilities within the Department of Commerce may vary depending on the nature and type of the emergency situation. However, generally, if a Senior Bureau Procurement Official (BPO) determines that emergency acquisition flexibilities are required to meet contracting needs during an emergency situation, the BPO must obtain the Senior Procurement Executive's concurrence. In the event that increased warrant authority is needed, the BPO should contact the Senior Procurement Executive.

(b) *Continuity of Operations Plan.* Each Contracting Activity shall have an updated Continuity of Operations Plan, in place designating emergency personnel with warrant levels.

(c) *Management controls.* Senior BPOs must take affirmative steps to ensure that emergency flexibilities are used solely for requirements that have a clear and direct relationship to the emergency situation, and that appropriate management controls are established and maintained to support the use of the increased thresholds. The Office of Acquisition Management will conduct periodic reviews of transactions made pursuant to the expanded authorities to evaluate whether the transactions:

(1) Were in support of the emergency situation;

(2) Were made by an authorized individual;

(3) Were appropriately documented; and

(4) Provided the maximum practicable opportunity for small business participation.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1319—SMALL BUSINESS PROGRAMS

Subpart 1319.2—Policies

Sec.
1319.201 General policy.
1319.202 Specific policies.
1319.202–70 Small business set-aside review form.

Subpart 1319.5—Set-Asides for Small Business

1319.502 Setting aside acquisitions.
1319.502–3 Partial set-asides.
1319.505 Rejecting Small Business Administration recommendations.

Subpart 1319.6—Certificates of Competency and Determination of Responsibility

1319.602 Procedures.
1319.602–1 Referral.

Subpart 1319.7—The Small Business Subcontracting Program

1319.705 Responsibilities of the contracting officer under the subcontracting assistance program.
1319.705–4 Reviewing the subcontracting plan.

Subpart 1319.8—Contracting With the Small Business Administration (the 8(a) Program)

1319.800 General.
1319.811 Preparing the contracts.
1319.811–3 Contract clauses.
1319.812 Contract administration.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1319.2—Policies.

1319.201 General policy.

(a) The DOC Office of Small and Disadvantaged Business Utilization (OSDBU) is headed by a Director who shall report and be responsible to the Deputy Secretary on matters of policy and legislative requirements.

(b) Each Contracting Office shall appoint Small Business Specialists to assist the HCA in effectively implementing the small business programs, including achieving program goals.

1319.202 Specific policies.

Procurement actions valued above $100,000 will be reviewed by the Director, OSDBU, or designee for the purpose of making recommendations for solicitation/award under FAR Part 19.

1319.202–70 Small business set-aside review form.

Form CD 570, Small Business Set-Aside Review, shall be submitted for approval to the Operating Unit Counsel Small Business Specialist, and forwarded to the OSDBU for approval. If applicable, the Form CD 570 will be submitted to the SBA Procurement Center Representative (PCR) for review. The Form CD 570 is required for:

(a) Procurement actions valued above $100,000;

(b) Modifications to existing contracts that add new work valued over $550,000 or that increase the total contract cost to over $550,000;

(c) Consolidation of two or more procurement requirements for goods and services.

Subpart 1319.5—Set-Asides for Small Business

1319.502 Setting aside acquisitions.

1319.502–3 Partial set-asides.

A partial set-aside shall not be made if there is a reasonable expectation that only two capable concerns (one large and one small) will respond with offers unless the set-aside is authorized by the designee set forth in CAM 1301.70.

1319.505 Rejecting Small Business Administration recommendations.

(a) The designee authorized to render a decision on the Small Business Administration's appeal of the contracting officer's decision is set forth in CAM 1301.70.

(b) In response to SBA's appeal to the agency head, the designee authorized in CAM 1301.70 shall forward justification for their decision to the agency head.

(c) The designee authorized in CAM 1301.70 shall reply to the SBA within 30 working days after receiving the appeal. The decision of the designee shall be final.

Subpart 1319.6—Certificates of Competency and Determination of Responsibility

1319.602 Procedures.

1319.602–1 Referral.

When the contracting officer determines that the successful small business offeror lacks certain elements of responsibility, the contracting officer will withhold award and refer the matter to the cognizant Small Business Administration Government Contracting Area Office. A copy of the referral shall be provided to the Director of the OSDBU.

Subpart 1319.7—The Small Business Subcontracting Program

1319.705 Responsibilities of the contracting officer under the subcontracting assistance program.

1319.705–4 Reviewing the subcontracting plan.

The prime contractor's proposed subcontracting plan shall be reviewed

by the contracting officer for adequacy, ensuring that the required information, goals, and assurances are included. The contracting officer may obtain advice and recommendations from the SBA procurement center representative, the contracting activity's small business specialist and the DOC OSDBU. The CO shall give the reviewers sufficient time and information to review the plan and ask questions.

Subpart 1319.8—Contracting With the Small Business Administration (the 8(a) Program)

1319.800 General.

(a) By Partnership Agreement between the Small Business Administration (SBA) and the Department of Commerce, the SBA delegated authority to the Senior Procurement Executive to enter into 8(a) prime contracts and purchase orders. To implement this authority, the Senior Procurement Executive has authorized a class FAR deviation to applicable portions of FAR Subpart 19.8 and FAR Part 52. Under the class deviation, the authority to enter into 8(a) prime contracts and purchase orders is re-delegated to contracting officers.

(b) When awarding 8(a) contracts and purchase orders, contracting officers shall operate in accordance with the terms of the Partnership Agreement and take full advantage of the streamlined procedures in the agreement. Contracting officers shall review the responsibilities and procedures for 8(a) awards as outlined in the Partnership Agreement and work closely with their respective Small Business Specialists and the OSDBU.

(c) The Partnership Agreement contains the procedures for submitting an offer letter to the appropriate SBA office. Contracting officers shall provide a copy of all offering letters to the OSDBU when they are transmitted to SBA.

1319.811 Preparing the contracts.

1319.811–3 Contract clauses.

(a) The contracting officer shall insert the clause 1352.219–70, *Section 8(a) Direct Award (Deviation),* in direct contracts and purchase orders processed under the Partnership Agreement. The clauses at FAR 52.219–11, Special 8(a) Contract Conditions, 52.219–12, Special 8(a) Subcontract Conditions, and 52.219–17, Section 8(a) Award, *shall not be used.*

(b) The contracting officer shall insert the clause 1352.219–71, *Notification to Delay Performance (Deviation),* in solicitations and purchase orders issued under the Partnership Agreement.

(c) The contracting officer shall insert the clause 1352.219–72, *Notification of Competition Limited to Eligible 8(a) Concerns, Alternate III (Deviation),* when the acquisition is processed under the Partnership Agreement.

1319.812 Contract administration.

Awards under the Partnership Agreement are subject to 15 U.S.C. 637(a)(21). These contracts shall contain the clause 1352.219–70, *Section 8(a) Direct Award (Deviation),* which requires the contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

PART 1322—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1322.1—Basic Labor Policies

Sec.
1322.101 Labor relations.
1322.101–1 General.
1322.101–3 Reporting labor disputes.
1322.101–4 Removal of items from contractor's facilities affected by work stoppages.
1322.103 Overtime.
1322.103–4 Approvals.

Subpart 1322.3—Contract Work Hours and Safety Standards Act

1322.302 Liquidated damages and overtime pay.

Subpart 1322.4—Labor Standards for Contracts Involving Construction

1322.404 Davis-Bacon Act wage determination.
1322.404–6 Modification of wage determination.
1322.406 Administration and enforcement.
1322.406–8 Investigations.

Subpart 1322.6—Walsh-Healey Public Contracts Act

1322.604 Exemptions.
1322.604–2 Regulatory exemptions.

Subpart 1322.8—Equal Employment Opportunity

1322.805 Procedures.
1322.807 Exemptions.

Subpart 1322.10—Service Contract Act of 1965, as Amended

1322.1001 Definitions.

Subpart 1322.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

1322.1305 Waivers.

Subpart 1322.14—Employment of Workers With Disabilities

1322.1403 Waivers.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1322.1—Basic Labor Policies

1322.101 Labor relations.

1322.101–1 General.

The designee authorized to designate programs or requirements for contractors notifying the Government of actual or potential labor disputes is set forth in CAM 1301.70.

1322.101–3 Reporting labor disputes.

(a) The designee authorized to report any potential or actual labor disputes that may interfere with performing any contracts under its cognizance is designated in CAM 1301.70.

(b) The contracting officer shall seek legal advice and assistance from Procurement Counsel when a potential or actual labor dispute that may interfere with the contract performance occurs.

1322.101–4 Removal of items from contractors' facilities affected by work stoppages.

The contracting officer shall obtain approval from the head of the contracting office and seek legal advice before initiating any action in accordance with FAR 22.101–4.

1322.103 Overtime.

1322.103–4 Approvals.

Approval of use of overtime may be granted by the approving official as set forth in CAM 1301.70.

Subpart 1322.3—Contract Work Hours and Safety Standards Act

1322.302 Liquidated damages and overtime pay.

The designee authorized to find that the administratively determined liquidated damages due under FAR 22.302(a) are incorrect or that the contactor or subcontractor inadvertently violated the Contract Work Hours and Safety Standards Act is set forth in CAM 1301.70.

Subpart 1322.4—Labor Standards for Contracts Involving Construction

1322.404 Davis-Bacon Act wage determination.

1322.404–6 Modification of wage determination.

The designee authorized to request an extension beyond 90 days after bid opening from the Department of Labor Administrator, Wage and Hour Division is set forth in CAM 1301.70.

1322.406 Administration and enforcement.

1322.406–8 Investigations.

The designee authorized to process a contracting officer's report on labor

standards investigations is set forth in CAM 1301.70.

Subpart 1322.6—Walsh-Healey Public Contracts Act

1322.604 Exemptions.

1322.604–2 Regulatory exemptions.

The designee authorized to request that the Secretary of Labor exempt a contract or class of contracts from Walsh-Healey Act stipulations is set forth in CAM 1301.70.

Subpart 1322.8—Equal Employment Opportunity

1322.805 Procedures.

The designee authorized to approve award without pre-award clearance is set forth in CAM 1301.70.

1322.807 Exemptions.

The designee authorized to exempt a contract from all or part of Executive Order 11246 for national security purposes is set forth in CAM 1301.70.

Subpart 1322.10—Service Contract Act of 1965, as Amended

1322.1001 Definitions.

The DOC labor advisor is the Assistant General Counsel for Administration/Employment & Labor Law Division.

Subpart 1322.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

1322.1305 Waivers.

(a) The designee authorized to waive any requirement in FAR 22.13 if it is determined that the contract is essential to national security is set forth in CAM 1301.70.

(b) The contracting officer must submit requests for waivers to the designee authorized under 1322.1305 (a). The request shall include a justification for the waiver and be available in electronic format.

Subpart 1322.14—Employment of Workers With Disabilities

1322.1403 Waivers.

(a) The designee authorized to waive any or all terms of the clause at FAR 52.222–36 is set forth in CAM 1301.70.

(b) The designee authorized, with the concurrence of the Deputy Assistant Secretary of Labor, to waive any requirement of FAR Subpart 22.14 when it is determined that the contract is essential to the national security, is set forth in CAM 1301.70.

(c) The contracting officer must submit requests for waivers to the designee authorized under 48 CFR 1322.1403 (a) and (b). The request shall include a justification for the waiver and be available in electronic format.

PART 1323—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 1323.2—Energy and Water Efficiency and Renewable Energy

Sec.
1323.204 Procurement exemptions.

Subpart 1323.4—Use of Recovered Materials

1323.404 Agency affirmative procurement programs.
1323.404–70 DOC affirmative procurement program.

Subpart 1323.5—Drug-Free Workplace

1323.506 Suspension of payments, termination of contract and debarment and suspension actions.

Subpart 1323.7—Contracting for Environmentally Preferable and Energy-Efficient Products and Services

1323.705 Electronic products environmental assessment tool.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1323.2—Energy and Water Efficiency and Renewable Energy

1323.204 Procurement exemptions.

The designee authorized to exempt the procurement of an ENERGY STAR or Federal Energy Management Program (FEMP)-designated product as described in FAR 23.203 is set forth in CAM 1301.70.

Subpart 1323.4—Use of Recovered Materials

1323.404 Agency affirmative procurement programs.

1323.404–70 DOC affirmative procurement program.

The Department of Commerce's affirmative procurement program is described in CAM 1323.70.

Subpart 1323.5—Drug-Free Workplace

1323.506 Suspension of payments, termination of contract and debarment and suspension actions.

The designee authorized to waive a determination to suspend contract payments, terminate a contract for default, or debar or suspend a contractor for Drug-Free Workplace violations, is set forth in CAM 1301.70. This authority may not be delegated.

Subpart 1323.7—Contracting for Environmentally Preferable and Energy-Efficient Products and Services

1323.705 Electronic products environmental assessment tool.

The procedures for granting exceptions to the requirement in FAR 23.705 are set forth in CAM 1323.70.

PART 1324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1324.1—Protection of Individual Privacy

Sec.
1324.103 Procedures.

Subpart 1324.2—Freedom of Information Act

1324.203 Policy.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1324.1—Protection of Individual Privacy

1324.103 Procedures.

DOC rules implementing the Privacy Act of 1974 are described in 15 CFR Part 4.

Subpart 1324.2—Freedom of Information Act

1324.203 Policy.

DOC's implementation of the Freedom of Information Act is described in 15 CFR Part 4 and DAO 205–14.

PART 1325—FOREIGN ACQUISITION

Subpart 1325.1—Buy American Act—Supplies

Sec.
1325.103 Exceptions.
1325.105 Determining reasonableness of cost.

Subpart 1325.2—Buy American Act—Construction Materials

1325.204 Evaluating offers of foreign construction material.

Subpart 1325.10—Additional Foreign Acquisition Regulations

1325.1001 Waiver of right to examination of records.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1325.1—Buy American Act—Supplies

1325.103 Exceptions.

(a) The designee authorized to make a determination that domestic preference would be inconsistent with the public interest in a case where the DOC has an agreement with a foreign government providing a blanket

exception to the Buy America Act is set forth in CAM 1301.70.

(b)(1) The contracting officer shall submit documentation supporting a nonavailability determination to the DOC's representative to the Civilian Agency Acquisition Council (CAAC). The DOC representative shall forward the documentation to the CAAC for possible removal of the product from the product nonavailablity list at FAR 25.104.

(2) The contracting officer shall submit documentation supporting a determination that nonavailabilty of an article is likely to affect future acquisitions to the DOC's representative to the CAAC for possible addition to the product nonavailability list at FAR 25.104.

1325.105 Determining reasonableness of cost.

The designee authorized to make a written determination that the use of higher evaluation factors than those in FAR 25.105(b) is appropriate is set forth in CAM 1301.70.

Subpart 1325.2—Buy American Act—Construction Materials

1325.204 Evaluating offers of foreign construction material.

The designee authorized to specify a percentage higher than the 6 percent that the contracting officer must add to the cost of any foreign construction material proposed for exception from the requirements of the Buy America Act is set forth in CAM 1301.70.

Subpart 1325.10—Additional Foreign Acquisition Regulations

1325.1001 Waiver of right to examination of records.

The designee authorized to execute a determination and findings in accordance with FAR 25.1001(a)(2)(iii) set forth in CAM 1301.70.

PART 1326—OTHER SOCIOECONOMIC PROGRAMS

Subpart 1326.2—Disaster or Emergency Assistance Activities

Sec.

1326.203 Transition of work.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1326.2—Disaster or Emergency Assistance Activities

1326.203 Transition of work.

The designee authorized to determine that transitioning response, relief, and/or reconstruction activity to a local firm, or firms, is not feasible or practicable as set forth in CAM 1301.70.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1327—PATENTS, DATA, AND COPYRIGHTS

Subpart 1327.2—Patents and Copyrights

Sec.

1327.201 Patent and copyright infringement liability.
1327.201–2 Contract clauses.

Subpart 1327.3—Patent Rights Under Government Contracts

1327.303 Contract clauses.
1327.304 Procedures.
1327.304–4 Appeals.
1327.305 Administration of patent rights clauses.
1327.305–2 Administration by the Government.

Subpart 1327.4—Rights in Data and Copyrights

1327.404 Basic rights in data clause.
1327.404–4 Contractor's release, publication, and use of data.
1327.404–5 Unauthorized, omitted, or incorrect markings.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1327.2—Patents and Copyrights

1327.201 Patent and copyright infringement liability.

1327.201–2 Contract clauses.

The designee authorized to approve the insertion of clause 52.227–5, *Waiver of Indemnity,* in solicitations and contracts is set forth in CAM 1301.70.

Subpart 1327.3—Patent Rights Under Government Contracts

1327.303 Contract clauses.

(a) The designee authorized to determine, at contract award, that it would be in the national interest to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement is set forth in CAM 1301.70.

(b) The designee authorized to determine that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of chapter 18 of title 35 of the United States Code is set forth in CAM 1301.70.

(c) The designee authorized to determine, at contract award, that it would be in the national interest to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement is set forth in CAM 1301.70.

1327.304 Procedures.

1327.304–4 Appeals.

The designee authorized to provide the contractor with a written statement of the basis for taking the actions described in FAR 27.304–5(a) is set forth in CAM 1301.70.

1327.305 Administration of patent rights clauses.

1327.305–2 Administration by the Government.

The contracting officer shall promptly furnish all invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information relating to patent rights clauses to the DOC Patent Attorney.

Subpart 1327.4—Rights in Data and Copyrights

1327.404 Basic rights in data clause.

1327.404–4 Contractor's release, publication, and use of data.

(a) Insert clause 1352.227–70, *Rights in Data, Assignment of Copyright,* in all solicitations and contracts if FAR Clause 52.227–17 has been used in the solicitation or contract and the contracting officer wants the contractor to assign copyright to the Government.

(b) In appropriate cases, the contracting officer may place limitations or restrictions on the contractor's exercise of its rights in data first produced in the performance of the contract, including a requirement to assign copyright to the Government or another party.

1327.404–5 Unauthorized, omitted, or incorrect markings.

The designee authorized to concur with the contracting officer's determination that markings are not authorized is set forth in CAM 1301.70.

PART 1328—BONDS AND INSURANCE

Subpart 1328.1—Bonds and Other Financial Protections

Sec.

1328.101 Bid guarantees.
1328.101–1 Policy on use.
1328.105 Other types of bonds.
1328.106 Administration.
1328.106–2 Substitution of surety bonds.
1328.106–6 Furnishing information.

Subpart 1328.2—Sureties and Other Security for Bonds

1328.203 Acceptability of individual sureties.
1328.203–7 Exclusion of individual sureties.

Subpart 1328.3—Insurance

1328.305 Overseas workers' compensation and war-hazard insurance.

1328.310 Contract clause for work on a Government installation.
1328.310–70 Solicitation provisions and contract clauses.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1328.1—Bonds and Other Financial Protections

1328.101 Bid guarantees.

1328.101–1 Policy on use.

The designee authorized to make a class waiver for the requirement to obtain a bid guarantee when a performance bond or a performance and payment bond is required is set forth in CAM 1301.70.

1328.105 Other types of bonds.

The designee authorized to approve using other types of bonds in connection with acquiring particular supplies or services is set forth in CAM 1301.70.

1328.106 Administration.

1328.106–2 Substitution of surety bonds.

The designee authorized to approve substituting a new surety bond for the previously approved original bond is set forth in CAM 1301.70.

1328.106–6 Furnishing information.

When a payment bond has been provided for a contract, the designee authorized to furnish a certified copy of the bond and the contract to any person who makes a proper request is set forth in CAM 1301.70.

Subpart 1328.2—Sureties and Other Security for Bonds

1328.203 Acceptability of individual sureties.

(a) Contracting officers shall obtain the opinion of the Procurement Counsel as to the adequacy of the documents pledging the assets of an individual surety prior to accepting bid guarantee and payment and performance bonds.

(b) Evidence of possible criminal or fraudulent activities by an individual surety shall be referred to the DOC Office of Inspector General. Policies and procedures for the initiation and conduct of investigations by the Office of Inspector General are prescribed in DAO 207–10, *Inspector General Investigations.*

1328.203–7 Exclusion of individual sureties.

The designee authorized to exclude an individual from acting as a surety on bonds submitted by offerors on procurements by the executive branch of the Federal Government is set forth in CAM 1301.70.

Subpart 1328.3—Insurance

1328.305 Overseas workers' compensation and war-hazard insurance.

The designee authorized to recommend a waiver to the Secretary of Labor is set forth in CAM 1301.70.

1328.310 Contract clause for work on a Government installation.

1328.310–70 Solicitation provisions and contract clauses.

(a) Insert clause 1352.228–70, *Insurance Coverage,* in all contracts when:

(1) Government property is involved;

(2) The contract amount is expected to be over the simplified acquisition threshold, and

(3) The contract will require work on a Government installation

(b)(1) The clause is not required in fixed-price solicitations and contracts if:

(i) Only a small amount of work is required on the Government installation (*e.g.*, a few brief visits per month); or

(ii) All the work on the Government installation is to be performed outside the United States, its possessions and Puerto Rico.

(2) The contracting officer may increase the dollar limits established in the clause when it is determined to be in the best interest of the Government. Prior to increasing the dollar limits the contracting officer shall seek the advice of Procurement Counsel.

(c) Insert clause 1352.228–71, *Deductibles Under Required Insurance Coverage—Cost-Reimbursement*, in all cost-reimbursement contracts when the clause at 1352.228–70, *Insurance Coverage*, is used.

(d) Insert clause 1352.228–72, *Deductibles Under Required Insurance Coverage—Fixed Price*, in all fixed-price contracts when the clause at 1352.228–70, *Insurance Coverage*, is used.

(e) Insert clauses 1352.228–73 through 1352.228–75, unless otherwise indicated by the specific instructions for their use below, in any contract for the lease of aircraft.

(f) Insert clause 1252.228–73, *Loss of or Damage to Leased Aircraft*, in any contract for the lease of aircraft, except in the following circumstances:

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

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

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

(g) Insert clause 1352.228–74, *Fair Market Value of Aircraft*, in all aircraft lease/rentals.

(h) The contracting officer shall insert the clause at 1352.228–75, *Risk and Indemnities*, in any contract for the lease of aircraft when the Government will have exclusive use of the aircraft for a period of less than thirty days.

(i) Insert clause 1352.228–76, *Approval of Group Insurance Plans*, in all cost reimbursable contracts.

(j) The contractor shall submit the plan to the CO for approval under cost-reimbursement contracts, before buying insurance under a group insurance plan. Any change in benefits provided under an approved plan that can reasonably be expected to increase significantly the cost to the Government shall require similar approval.

PART 1329—TAXES

Subpart 1329.1—General

Sec.
1329.101 Resolving tax problems.

Subpart 1329.2—Federal Excise Taxes

1329.203 Other Federal tax exemptions.
1329.203–70 DOC Federal tax exemption.

Subpart 1329.3—State and Local Taxes

1329.303 Application of State and local taxes to government contractors and subcontractors.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1329.1—General

1329.101 Resolving tax problems.

Legal questions relating to tax issues should be referred to the Procurement Counsel.

Subpart 1329.2—Federal Excise Taxes

1329.203 Other Federal tax exemptions.

1329.203–70 DOC Federal tax exemption.

(a) The Office of Acquisition Management has obtained a permit from the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives enabling DOC and its contractors to purchase spirits (*e.g.,* specially denatured spirits) tax-free for non-beverage Government use.

(b) When purchasing spirits for non-beverage use by DOC personnel, the contracting officer shall attach a copy of the permit to the contract. Upon receipt of the spirits, the contractor shall return the permit to the contracting officer unless future orders are anticipated.

Subpart 1329.3—State and Local Taxes

1329.303 Application of State and local taxes to government contractors and subcontractors.

The designee authorized to review a proposed designation of a contractor as an agent of the Government is set forth in CAM 1301.70.

PART 1330—COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 1330.2—CAS Program Requirements

Sec.
1330.201 Contract requirements.
1330.201–5 Waiver.
1330.202 Disclosure requirements.
1330.202–2 Impracticality of submission.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1330.2—CAS Program Requirements

1330.201 Contract requirements.

1330.201–5 Waiver.

The designee authorized to waive the applicability of Cost Accounting Standards for a particular contract or subcontract is set forth in CAM 1301.70.

1330.202 Disclosure requirements.

1330.202–2 Impracticality of submission.

The DOC Head of Agency for Procurement is authorized to determine that it is impractical to secure a Disclosure Statement, although submission is required, and to authorize contract award without obtaining the Statement.

PART 1331—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1331.1—Applicability

Sec.
1331.101 Objectives.

Subpart 1331.2—Contracts With Commercial Organizations

1331.205 Selected costs.
1331.205–6 Compensation for personal services.
1331.205–32 Precontract costs.
1331.205–70 Duplication of effort.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1331.1—Applicability

1331.101 Objectives.

The designee authorized to approve individual deviations concerning cost principles is set forth in CAM 1301.70.

Subpart 1331.2—Contracts With Commercial Organizations

1331.205 Selected costs.

1331.205–6 Compensation for personal services.

The designee authorized to waive cost allowability limitations under certain circumstances regarding compensation of foreign nationals is set forth in CAM 1301.70.

1331.205–32 Precontract costs.

If precontract costs are anticipated, pursuant to negotiations and in anticipation of contract award, insert clause 1352.231–70 *Precontract Costs,* in the contract.

1331.205–70 Duplication of effort.

The Department will not pay any costs for work that is duplicative of costs charged against any other contract, subcontract or Government source. Insert clause 1352.231–71, *Duplication of Effort,* in all cost-reimbursement, time and materials, and labor hour solicitations and contracts when applicable.

PART 1332—CONTRACT FINANCING

Sec.
1332.003 Simplified acquisition procedures financing.
1332.006 Reduction or suspension of contract payments upon finding of fraud.
1332.006–1 General.
1332.006–3 Responsibilities.
1332.006–4 Procedures.
1332.006–5 Reporting.

Subpart 1332.1—Non-Commercial Item Purchase Financing

1332.114 Unusual contract financing.

Subpart 1332.2—Commercial Item Purchase Financing

1332.201 Statutory authority.
1332.202 General.
1332.202–1 Policy.

Subpart 1332.4—Advance Payments for Non-Commercial Items

1332.402 General.
1332.404 Exclusions.
1332.407 Interest.

Subpart 1332.5—Progress Payments Based on Costs

1332.501 General.
1332.501–2 Unusual progress payments.

Subpart 1332.7—Contract funding

1332.702 Policy.
1332.702–70 Forms.

Subpart 1332.8—Assignment of claims

1332.802 Conditions.

Subpart 1332.9—Prompt Payment

1332.903 Responsibilities.
1332.906 Making payments.

Subpart 1332.11—Electronic Funds Transfer

1332.1108 Payment by Governmentwide commercial purchase card.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

1332.003 Simplified acquisition procedures financing.

Contract financing may be provided for purchases made under the authority of FAR Part 13. Contract financing shall be made in accordance with FAR Part 32.

1332.006 Reduction or suspension of contract payments under finding of fraud.

1332.006–1 General.

The designee authorized to exercise the responsibility to reduce or suspend contract payments is set forth in CAM 1301.70.

1332.006–3 Responsibilities.

DOC personnel shall immediately report to the Office of Inspector General any apparent or suspected instances where a contractor's request for advance, partial or progress payments is based on fraud in accordance with DAO 207–10, *Inspector General Investigations.*

1332.006–4 Procedures.

(a) The Agency Head as described under 1332.006–4 is set forth in CAM 1301.70.

(b) The Office of Inspector General shall perform the function of the Remedy Coordination Official.

1332.006–5 Reporting.

In accordance with 41 U.S.C. 255, the head of an agency shall prepare a report for each fiscal year in which a recommendation has been received pursuant to FAR 32.006–4(a).

Subpart 1332.1—Non-Commercial Item Purchase Financing

1332.114 Unusual contract financing.

The designee authorized to approve unusual contract financing arrangements is set forth in CAM 1301.70.

Subpart 1332.2—Commercial Item Purchase Financing

1332.201 Statutory authority.

Payment for commercial items may be made under such terms and conditions as the designee authorized in CAM 1301.70 determines are appropriate or customary in the commercial marketplace and are in the best interest of the United States.

1332.202 General.

1332.202–1 Policy.

The designee authorized to approve unusual contract financing is set forth in CAM 1301.70.

Subpart 1332.4—Advance Payments for Non-Commercial Items

1332.402 General.

(a) Advanced payment may be authorized for contracts, other than those at FAR 32.403(a) and (b), only if other types of financing are not reasonably available to the contractor in adequate amounts.

(b) The designee authorized to determine when advance payment is in the public interest or facilitates national defense is set forth in CAM 1301.70.

1332.404 Exclusions.

Advance payments may be authorized for items listed in FAR 32.404(a).

1332.407 Interest.

The designee authorized to approve advance payment without interest is as set forth in CAM 1301.70.

Subpart 1332.5—Progress Payments Based on Costs

1332.501 General.

1332.501–2 Unusual progress payments.

The designee authorized to approve a contractor's request for unusual progress payments is set forth in CAM 1301.70.

Subpart 1332.7—Contract Funding

1332.702 Policy.

Contracting officers shall obtain assurances of available funds only from properly authorized designated certifying officers in accordance with Part 4, Section 1110 of the Treasury Financial Manual.

1332.702–70 Forms.

Contracting officers must obtain an electronic or hardcopy procurement request form on which the availability of adequate funds have been certified by a designated certifying officer. This form must have the name of the certifying official and the certified available funds, as well as the technical and other specifications of the request, administrative approvals, clearances, and information for processing payment.

Subpart 1332.8—Assignment of Claims

1332.802 Conditions.

The designee authorized to receive the written notice of assignment is set forth in CAM 1301.70.

Subpart 1332.9—Prompt Payment

1332.903 Responsibilities.

The designee authorized to establish Prompt Payment policies and procedures is set forth in CAM 1301.70.

1332.906 Making payments.

The designee authorized to allow invoice payments earlier than 7 days prior to the due date as specified in the contract is set forth in CAM 1301.70.

Subpart 1332.11—Electronic Funds Transfer

1332.1108 Payment by Governmentwide commercial purchase card.

Use of the Governmentwide commercial purchase card is subject to the requirements of the FAR, other internal Departmental policies, as well as operating unit policies and procedures related to the purchase card. All purchases made with the purchase card must comply with all procedures and documentation requirements that apply to the procurement action.

PART 1333—PROTESTS, DISPUTES, AND APPEALS

Subpart 1333.1—Protests

Sec.

1333.101 Definitions.
1333.102 General.
1333.103 Protests to the agency.
1333.104 Protests to GAO.
1333.104–70 Protests to GAO and Court of Federal Claims.

Subpart 1333.2—Disputes and Appeals

1333.203 Applicability.
1333.206 Initiation of a claim.
1333.211 Contracting officer's decision.
1333.212 Contracting officer's duties upon appeals.
1333.215 Contract clauses.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1333.1—Protests

1333.101 Definitions.

Protest Decision Authority means agency officials above the level of the contracting officer who have been designated by the Procurement Executive to issue agency protest decisions under Executive Order 12979.

1333.102 General.

(a) Contracting officers shall promptly notify the Procurement Counsel, and seek legal advice upon receiving notice that a protest has been filed in any forum.

(b) The designee authorized to determine that a solicitation, proposed award, or award under protest does not comply with the requirements of law or regulation, and to take the actions specified at FAR 33.102 (b) is set forth in CAM 1301.70. Corrective action shall only be taken after consultation with Procurement Counsel.

1333.103 Protests to the agency.

(a) Insert provision 1352.233–70, *Agency Protests,* in all DOC solicitations, except these issued by the U.S. Patent and Trademark Office.

(b) All agency protest decisions shall be reviewed by Procurement Counsel before submission to the protester.

1333.104 Protests to GAO.

1333.104–70 Protests to GAO and Court of Federal Claims.

(a) Insert clause 1352.233–71, *GAO and Court of Federal Claims Protests,* in all DOC solicitations, except those for the U.S. Patent and Trademark Office.

(b) Only Procurement Counsel shall communicate with the Government Accountability Office (GAO), the Court of Federal Claims and the Department of Justice regarding applicable protests. Procurement Counsel shall be responsible for preparation and submission of the agency report to the GAO and litigation reports to the Department of Justice.

(c) The designee authorized to authorize, on a nondelegable basis, the award of a contract when the agency has received notice from the GAO of a preaward protest filed directly with the GAO is set forth in CAM 1301.70.

(d) The designee authorized to authorize, on a nondelegable basis, contract performance notwithstanding protest after award is set forth in CAM 1301.70.

(e) The designee authorized to report and explain the reasons why the agency has not fully implement GAO recommendations with respect to a protest is set forth in CAM 1301.70.

Subpart 1333.2—Disputes and Appeals

1333.203 Applicability.

The designee authorized to determine that the application of the Contract Disputes Act of 1978 to a contract with an international organization or a subsidiary body of that organization would not be in the public interest is set forth in CAM 1301.70.

1333.206 Initiation of a claim.

Contracting officers shall promptly notify Procurement Counsel and seek legal advice upon receiving a contractor claim.

1333.211 Contracting officer's decision.

All contracting officer decisions on claims shall be reviewed by

Procurement Counsel before submission to the contractor.

1333.212 Contracting officer's duties upon appeals.

Only Procurement Counsel will communicate with the Civilian Board of Contract Appeals or the Department of Justice regarding appeals of contracting officer decisions. Procurement Counsel shall be responsible for preparation and submission of all filings with the Board.

1333.215 Contract clauses.

Alternate I of FAR 52.233–1, *Disputes,* may be used at the discretion of the contracting officer.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1334—MAJOR SYSTEM ACQUISITION

Subpart 1334.0—General

Sec.
1334.003 Responsibilities.
1334.005 General requirements.
1334.005–6 Full production.

Subpart 1334.2—Earned Value Management System

1334.201 Policy.
1334.201–70 Policy.
1334.202 Integrated baseline reviews.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1334.0—General

1334.003 Responsibilities.

(a) The designee authorized to carry out the responsibilities described under FAR 34.003 is set forth in CAM 1301.70.

(b) Agency procedures related to major system acquisitions are set forth in DAO 208–3.

1334.005 General requirements.

1334.005–6 Full production.

The designee authorized to reaffirm mission need and program objectives and grant approval to proceed with the award of a contract for full production of a successfully tested major system is set forth in CAM 1301.70.

Subpart 1334.2—Earned Value Management System

1334.201 Policy.

1334.201–70 Policy.

(a) In accordance with the Department's Information Technology Investment Performance Measurement and Performance Reporting Policy, the use of an Earned Value Management System (EVMS) is required for major acquisitions for information technology development in which the development/modernization/enhancement costs are anticipated to equal or exceed $25 million over the life of the acquisition. The Chief Information Officer may require EVMS on other acquisitions if the project merits special attention due to sensitivity, mission criticality, or risk potential.

(b) If a project manager considers the use of an EVMS to be necessary for a major acquisition that does not meet the $25 million threshold, the project manager should conduct a cost/benefit analysis and consult with the OCIO on the advisability of requiring an EVMS.

(c) Project managers, contracting officers, and contracting officer representatives responsible for major acquisitions requiring an EVMS must successfully complete an Earned Value Management course that meets the requirements of the OCIO.

(d) The use of firm-fixed-price type contracts, subcontracts and other agreements are generally not suited to developmental efforts and the use of an EVMS is of limited utility under such arrangements. In the rare cases where a fixed-price type contract is contemplated for a developmental effort, the project manager and contracting officer must consult with the OCIO for guidance to determine whether an EVMS will be required.

(e) The use of an EVMS is generally discouraged for contracts, subcontracts, and other agreements where the period of performance is less than 12 months in duration. Additionally, application of an EVMS to work efforts that are not discrete in nature should be considered on a case-by-case basis.

(f) In cases where the nature of the work does not lend itself to the meaningful use of an EVMS, the OCIO may waive the EVMS requirement if appropriate.

1334.202 Integrated baseline reviews.

An Integrated Baseline Review shall be conducted when an Earned Value Management System is required.

PART 1335—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
1335.001 Definitions.
1335.006 Contracting methods and contract type.
1335.014 Government property and title.
1335.016 Broad agency announcement.
1335.016–70 DOC procedures for the use of broad agency announcements.
1335.017 Federally funded research and development centers.
1335.017–2 Establishing or changing an FFRDC.
1335.017–4 Reviewing FFRDCs

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

1335.001 Definitions.

Human subject means a living individual about whom an investigator (whether professional or student) conducting research obtains:

(1) Data through intervention or interaction with the individual, or

(2) Identifiable private information.

Intervention includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes. Interaction includes communication or interpersonal contact between investigator and subject. "Private information" includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (*i.e.,* the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

Research means a systematic investigation, including research, development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

1335.006 Contracting methods and contract type.

(a) Insert provision 1352.235–70, *Protection of Human Subjects,* in all solicitations where research services under the contract might involve the use of human subjects. The provision is mandatory where human subjects may be used in performance of the award and may not be modified without consultation with Program Counsel.

(b) Insert clause 1352.235–71, *Protection of Human Subjects—Exemption,* in all contracts where the agency has determined based on documentation submitted by the offeror in response to provision 1352.235–70, *Protection of Human Subjects,* that the research involving human subjects is exempt from the requirements of 15 CFR Part 27 and does not require

Institutional Review Board (IRB) review. The provision is mandatory where an appropriate agency official has determined that the research involving human subjects to be carried out in performance of the award is exempt from15 CFR Part 27, and may not be modified without consultation with Program Counsel.

(c) Insert clause 1352.235–72, *Protection of Human Subjects—Institutional Approval,* in all contracts where the agency has determined based on documentation submitted by the offeror in response to provision 1352.235–70, *Protection of Human Subjects,* that the research involving human subjects is not exempt from the requirements of 15 CFR Part 27 and requires review by a cognizant Institutional Review Board (IRB). The provision is mandatory where an appropriate Agency official has determined that the research involving human subjects to be carried out in performance of the award is not exempt from15 CFR Part 27 and requires review by a cognizant IRB, and may not be modified without consultation with Program Counsel.

(d) Insert clause 1352.235–73, *Protection of Human Subjects—After Initial Contract Award,* in all contracts where at the time of award no research involving human subjects is anticipated, but where decisions made in the course of the research may necessitate the addition of research involving human subjects to the work performed. The provision is mandatory where it is possible that the use of human subjects may be required in performance of the award but is not anticipated at the time of award, and may not be modified without consultation with Program Counsel.

1335.014 Government property and title.

The designee authorized to determine that the policies in FAR 35.014(b)(1)–(4) will not apply regarding title to equipment purchased by nonprofit institutions of higher learning and nonprofit organizations whose primary purpose is the conduct of scientific research is set forth in CAM 1301.70.

1335.016 Broad agency announcement.

1335.016–70 DOC procedures for the use of broad agency announcements.

Procedures for the use of broad agency announcements within the Department of Commerce are set forth in CAM 1335.016.

1335.017 Federal funded research and development centers.

1335.017–2 Establishing or changing an FFRDC.

The designee authorized to approve the establishment of an FFRDC, or change its basic purpose and mission, is set forth in CAM 1301.70.

1335.017–4 Reviewing FFRDCs.

The designee authorized to approve the continuation or termination of the sponsorship of an FFRDC is set forth in CAM 1301.70.

PART 1336—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1336.2—Special Aspects of Contract for Construction

Sec.
1336.203 Government estimate of construction costs.
1336.270 Special requirements for ship construction.

Subpart 1336.6—Architect-Engineer Services

1336.602 Selection of firms for architect-engineer contracts.
1336.602–2 Evaluation boards.
1336.602–4 Selection authority.
1336.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.
1336.605 Government cost estimate for architect-engineer work.
1336.609 Contract clauses.
1336.609–1 Design within funding limitations.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1336.2—Special Aspects of Contracting for Construction

1336.203 Government estimate of construction costs.

After award, the independent Government estimated price can be released, upon request, to those firms or individuals who submitted proposals.

1336.270 Special requirements for ship construction

See 48 CFR 1371 for special requirements for acquisition involving ship construction and ship repair.

Subpart 1336.6—Architect-Engineer Services

1336.602 Selection of firms for architect-engineer contracts.

1336.602–2 Evaluation boards.

Permanent and *ad hoc* architect-engineer evaluation boards may include preselection boards. When necessary, members of permanent, *ad hoc,* and preselection boards may be appointed from private practitioners of architecture, engineering, or related professions. Private practitioners may be appointed as deemed necessary by the BPO or higher agency official. The permanent and ad hoc evaluation boards should be comprised of at least a majority of government personnel.

1336.602–4 Selection authority.

Each contracting office shall designate the selection authority based on the complexity of each procurement.

1336.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.

(a) In contracts not expected to exceed the simplified acquisition threshold, either or both of the short selection processes set out at FAR 36.602–5 may be used.

(b) Each contracting office shall designate the selection authority based on the complexity of each procurement. The selection authority shall review the selection report and approve it or return it to the chairperson for appropriate revision.

1336.605 Government cost estimate for architect-engineer work.

After award, the independent Government estimated price can be released, upon request, to those firms or individuals who submitted proposals.

1336.609 Contract clauses.

1336.609–1 Design within funding limitations.

The designee authorized to make the determination described at FAR 36.609–1(c)(1) to enable exclusion of the clause at FAR 52.236–22 from the contract is set forth in CAM 1301.70.

PART 1337—SERVICE CONTRACTING

Subpart 1337.1—Service Contracts—General

Sec.
1337.110 Solicitation provisions and contract clauses.
1337.110–70 Personnel security processing requirements.
1337.110–71 Additional DOC clauses related to service contracting.

Subpart 1337.2—Advisory and Assistance Services

1337.204 Guidelines for determining availability of personnel.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1337.1—Service Contracts—General

1337.110 Solicitation provisions and contract clauses.

1337.110–70 Personnel security processing requirements.

(a) CAM 1337.70 establishes procedures for personnel security processing for contractors performing services on or within a Department of Commerce facility or through an information technology (IT) system, as required by the Department of Commerce *Security Manual* and Department of Commerce *Security Program Policy and Minimum Implementation Standards.*

(b) Insert clause 1352.237–70, *Security Processing Requirements—High or Moderate Risk Contracts,* in all service contracts designated as High or Moderate risk that will be performed on a DOC facility or when the contractor will access a DOC IT system.

(c) Insert clause 1352.237–71, *Security Processing Requirements—Low Risk Contracts,* in all service contracts designated as Low Risk that will be performed on or within a Department of Commerce facility or when the contractor will access a DOC IT system.

(d) Insert clause 1352.237–72, *Security Processing Requirements—National Security Contracts,* in all service contracts designated as National Security Contracts that will be performed on or within a Department of Commerce facility or when the contractor will access a DOC IT system.

(e) Insert clause 1352.237–73, *Foreign National Visitor and Guest Access to Departmental Resources,* in all DOC solicitations and contracts for services where foreign national access to any DOC facility or DOC IT system is required. The language of the clause may only be modified by adding more restrictive agency or operating unit counsel-specific guidance.

1337.110–71 Additional DOC clauses related to service contracting.

(a) Insert a clause substantially similar to 1352.237–74, *Progress Reports,* where progress reports are required in order to make periodic payments based upon contract progress made, or if the contracting officer otherwise determines that progress reports are needed.

(b) Insert a clause substantially similar to 1352.237–75, *Key Personnel,* when contract performance requires identification of contractor key personnel.

Subpart 1337.2—Advisory and Assistance Services

1337.204 Guidelines for determining availability of personnel.

The designee authorized to make the determinations described under FAR 37.204 is set forth in CAM 1301.70.

PART 1339—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 1339.1—General

Sec.
1339.107 Contract clauses.
1339.107–70 Information security.

Subpart 1339.2—Electronic and Information Technology

1339.270 Solicitation provisions and contract clauses.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1339.1—General

1339.107 Contract clauses.

Insert clause 1352.239–70, *Software License Addendum,* in all contracts when the primary purpose is to purchase new software licenses or renew existing licenses.

1339.107–70 Information security.

(a) For all service acquisitions over the micro-purchase threshold, contracting professionals shall coordinate with the designated Contracting Officer Representative (COR) to complete the *Information Security in Acquisition Checklist.*

(b) When the *Information Security in Acquisition Checklist* indicates that Clause 1352.239–73, *Security Requirements for Information Technology Resources,* is needed, contracting officers shall insert the clause in the solicitation and contracts. If the checklist indicates that the Certification and Accreditation requirement in Clause 1352.239–73 is not required, the contracting officer shall include the statement "*The Certification and Accreditation (C&A) requirements of Clause 1352.239–73 do not apply, and a Security Accreditation Package is not required*" in the statement of work.

(c) Contracting professionals shall insert the appropriate risk designation clause from CAM 1337.70 into DOC solicitations and contracts for services depending upon the level of contractor access privileges to DOC IT systems. In addition, contracting professionals shall document the official contract file to include the rationale for the designated risk level.

Subpart 1339.2—Electronic and Information Technology

1339.270 Solicitation provisions and contract clauses.

(a) Insert provision substantially similar to 1352.239–71, *Electronic and Information Technology,* in solicitations for Electronic and Information (EIT) to which it applies.

(b) Insert clause 1352.239–72, *Security Requirements for Information Technology Resources,* in all DOC solicitations and contracts for Information Technology services. The clause language may only be modified by adding more restrictive agency- or operating unit counsel -specific guidance.

PART 1341—ACQUISITION OF UTILITY SERVICES

Subpart 1341.2—Acquiring Utility Services

Sec.
1341.201 Policy.
1341.202 Procedures.
1341.204 GSA areawide contracts.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1341.2—Acquiring Utility Services

1341.201 Policy.

The designee authorized to enter into a contract pursuant to 42 U.S.C. 8287 (regarding shared energy savings, including cogeneration) is set forth in CAM 1301.70.

1341.202 Procedures.

The designee authorized to approve a determination that a written contract cannot be obtained from a utility supplier refusing to execute a tendered contract, and that the issuance of a purchase order is not feasible, is set forth in CAM 1301.70.

1341.204 GSA areawide Contracts.

The designee authorized to determine that the use of an areawide contract is not advantageous to the Government is set forth in CAM 1301.70.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1342—CONTRACT ADMINISTRATION

Subpart 1342.1—Contract Audit Services

Sec.
1342.102 Assignment of contract audit services.
1342.102–70 Interagency contract administration and audit services.

Subpart 1342.2—Contract Administration Services

1342.202 Assignment of contract administration.

Subpart 1342.5—Postaward Orientation

1342.503 Postaward conferences.
1342.503–70 Notice of postaward conference.

Subpart 1342.6—Corporate Administrative Contracting Officer

1342.602 Assignment and location.

Subpart 1342.7—Indirect Cost Rates

1342.703 General.
1342.703–2 Certificate of indirect costs.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1342.1—Contract Audit Services

1342.102 Assignment of contract audit services.

1342.102–70 Interagency contract administration and audit services.

(a) Generally, the final invoice shall not be approved until a close-out audit has been performed and all outstanding issues have been negotiated or resolved on the following types of contracts valued at $500,000 and above:

(1) Cost-reimbursement type contracts;

(2) The cost-reimbursement portion of fixed-price contracts;

(3) Letter contracts which provide for reimbursement of costs;

(4) Time-and-materials contracts; and

(5) Labor-hour contracts.

(b) If a close-out audit is not required, an audit may be requested regardless of the contract value when the contracting officer determines that an audit is justified under one of the following circumstances:

(1) There is some evidence of fraud or waste;

(2) The contractor's performance under the contract has been questionable;

(3) The contractor had a high incidence of unallowable costs under a previous contract;

(4) The contract is with a newly-established firm, or a firm that has just begun dealing with the Government.

Subpart 1342.2—Contract Administration Services

1342.202 Assignment of contract administration.

The designee authorized to approve delegations of CAO functions not listed in FAR 42.302 is set forth in CAM 1301.70.

Subpart 1342.5—Postaward Orientation

1342.503 Postaward conferences.

1342.503–70 Notice of postaward conference.

Insert a provision similar to 1352.242–70, *Postaward Conference,* in solicitations when the contracting officer determines that a postaward conference is needed.

Subpart 1342.6—Corporate Administrative Contracting Officer

1342.602 Assignment and location.

The designee authorized to approve the need for a corporate administrative contracting officer is set forth in CAM 1301.70.

Subpart 1342.7—Indirect Cost Rates

1342.703 General.

1342.703–2 Certificate of indirect costs.

The designee authorized to waive the requirement for contractor certification of proposed final indirect cost rates is set forth in CAM 1301.70.

PART 1344—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1344.3—Contractors' Purchasing Systems Reviews

Sec.
1344.302 Requirements.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1344.3—Contractors' Purchasing Systems Reviews

§ 1344.302 Requirements.

The designee authorized to lower or raise the $25 million sales threshold for performing a review to determine if a contractor purchasing system review is needed is set forth in CAM 1301.70.

PART 1345—GOVERNMENT PROPERTY

Subpart 1345.1—General

Sec.
1345.107 Contract clauses.
1345.107–70 Government furnished property.

Subpart 1345.6—Reporting, Reutilization, and Disposal

1345.604 Disposal of surplus property.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1345.1—General

1345.107 Contract clauses.

1345.107–70 Government furnished property.

Insert clause 1352.245–70, *Government Furnished Property,* when Government property is to be furnished to the contractor and the contractor will be accountable for, and have stewardship of, the property.

Subpart 1345.6—Reporting, Reutilization, and Disposal

§ 1345.604 Disposal of surplus property.

Surplus property shall be disposed of in accordance with procedures outlined in the DOC Personal Property Management Manual.

PART 1346—QUALITY ASSURANCE

Subpart 1346.4—Government Contract Quality Assurance

Sec.
1346.401 General.

Subpart 1346.5—Acceptance

1346.503 Place of acceptance.

Subpart 1346.6—Material Inspection and Receiving Reports

1346.601 General.

Subpart 1346.7—Warranties

1346.704 Authority for use of warranties.
1346.705 Limitations.
1346.710 Contract clauses.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1346.4—Government Contract Quality Assurance

1346.401 General.

Agency procedures for documenting government inspection are set forth under Subpart 1346.6.

Subpart 1346.5—Acceptance

1346.503 Place of acceptance.

Insert a clause substantially similar to 1352.246–70, *Place of Acceptance,* in contracts and solicitations to indicate where the acceptance of supplies and/or services will take place.

Subpart 1346.6—Material Inspection and Receiving Reports

1346.601 General.

Each DOC operating unit shall develop instructions and procedures regarding material inspection and receiving reports as appropriate.

Subpart 1346.7—Warranties

1346.704 Authority for use of warranties.

Contracting officers are authorized to approve the use of warranties.

1346.705 Limitations.

Warranties in cost reimbursement contracts are authorized.

1346.710 Contract clauses.

The warranty clauses and alternates under FAR Subpart 46.710 may be used in solicitations and contracts.

PART 1348—VALUE ENGINEERING

Subpart 1348.1—Policies and Procedures

Sec.
1348.102 Policies.

Subpart 1348.2—Contract Clauses

1348.201 Clauses for supply or service contracts.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1348.1—Policies and Procedures

1348.102 Policies.

(a) Contracting activities shall send contractor-submitted Value Engineering Change Proposals (VECPs) to the appropriate technical personnel for review.

(b) Technical personnel shall conduct a comprehensive review of VECPs for technical feasibility, usefulness, and adequacy of the contractor's estimate of cost savings; make a written report; and recommend acceptance or rejection to the contracting officer.

(c) The designee authorized to grant exemptions from value engineering provisions in appropriate supply, service, architect-engineer and construction contracts is set forth in CAM 1301.70.

Subpart 1348.2—Contract Clauses

1348.201 Clauses for supply or service contracts.

The designee authorized to grant exemptions from the requirements of FAR Part 48 for a contract or class of contracts is set forth in CAM 1301.70.

PART 1349—TERMINATION OF CONTRACTS

Subpart 1349.1—General Principles

Sec.
1349.106 Fraud or other criminal conduct.

Subpart 1349.4—Termination for Default

1349.402 Termination of fixed-price contracts for default.
1349.402–3 Procedure for default.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1349.1—General Principles

1349.106 Fraud or other criminal conduct.

If the terminating contracting officer (TCO) suspects fraud or other criminal conduct related to the settlement of a terminated contract, the TCO shall immediately discontinue negotiations and prepare a written report concerning the matter. The report shall be submitted to the Bureau Procurement Official, the Office of Inspector General, and the DOC suspension and debarring official. An informational copy shall be provided to Procurement Counsel.

Subpart 1349.4—Termination for Default

1349.402 Termination of fixed-price contracts for default.

1349.402–3 Procedure for default

No action relating to a default termination, including issuance of a show cause letter, cure notice, or notice of default, shall be taken unless notice has been provided to Procurement Counsel and the Procurement Executive, and the action has been reviewed for legal sufficiency.

PART 1350—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 1350.1—Extraordinary Contractual Actions

Sec.
1350.102 Delegation of and limitation on exercise of authority.
1350.102–1 Delegation of authority.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1350.1—Extraordinary Contractual Actions

1350.102 Delegation of and limitation on exercise of authority.

1350.102–1 Delegation of authority.

(a) The designee authorized to approve requests to obligate the government in excess of $55,000 under the extraordinary emergency authority set forth in CAM 1301.70. Such authority may not be delegated below the secretarial level for requests to obligate the Government in excess of $55,000.

(b) The designee authorized to approve any amendment without consideration that increases the contract price or unit price is set forth in CAM 1301.70.

(c) The designee authorized to indemnify against unusually hazardous or nuclear risks, including extension of such indemnification to subcontracts, is set forth in CAM 1301.70.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
1352.000 Scope of part.

Subpart 1352.1—Instructions for Using Provisions and Clauses

1352.102 Incorporating provisions and clauses.

Subpart 1352.2—Text of Provisions and Clauses

1352.200 Scope of subpart.
1352.201–70 Contracting officer's authority.
1352.201–71 Ratification release.
1352.201–72 Contracting officer's representative (COR).
1352.208–70 Restrictions on printing and duplicating.
1352.209–70 Potential organizational conflict of interest.
1352.209–71 Limitation of future contracting.
1352.209–72 Restrictions against disclosure.
1352.209–73 Compliance with the laws.
1352.209–74 Organizational conflict of interest.
1352.209–75 Title 13 and non-disclosure requirements.
1352.213–70 Evaluation utilizing simplified acquisition procedures.
1352.213–71 Instructions for submitting quotations under the simplified acquisition threshold—non-commercial.
1352.215–70 Proposal preparation.
1352.215–71 Instructions for oral presentations.
1352.215–72 Inquiries.
1352.215–73 Evaluation quantities-indefinite quantity contract.
1352.215–74 Best value evaluation.
1352.215–75 Evaluation criteria.
1352.215–76 Cost or pricing data.
1352.216–70 Estimated and allowable costs.
1352.216–71 Level of effort (cost-plus-fixed-fee, term contract).
1352.216–72 Determination of award fee.
1352.216–73 Distribution of award fee.
1352.216–74 Task orders.
1352.216–75 Minimum and maximum contract amounts.
1352.216–76 Placement of orders.
1352.216–77 Ceiling price.
1352.219–70 Section 8(a) direct award (Deviation).
1352.219–71 Notification to delay performance (Deviation).
1352.219–72 Notification of competition limited to eligible 8(a) concerns, Alternate III (Deviation).
1352.227–70 Rights in data, assignment of copyright.
1352.228–70 Insurance coverage.
1352.228–71 Deductibles under required insurance coverage—cost reimbursement.
1352.228–72 Deductibles under required insurance coverage—fixed price.
1352.228–73 Loss of or damage to leased aircraft.
1352.228–74 Fair market value of aircraft.

1352.228–75 Risk and indemnities.
1352.228–76 Approval of group insurance plans.
1352.231–70 Precontract costs.
1352.231–71 Duplication of effort.
1352.233–70 Agency protests.
1352.233–71 GAO and Court of Federal Claims protests.
1352.235–70 Protection of human subjects.
1352.235–71 Protection of human subjects—exemption.
1352.235–72 Protection of human subjects—institutional approval.
1352.235–73 Research involving human subjects—after initial contract award.
1352.237–70 Security processing requirements—high or moderate risk contracts.
1352.237–71 Security processing requirements—low risk contracts.
1352.237–72 Security processing requirements—national security contracts.
1352.237–73 Foreign national visitor and guest access to departmental resources.
1352.237–74 Progress reports.
1352.237–75 Key personnel.
1352.239–70 Software license addendum.
1352.239–71 Electronic and information technology.
1352.239–72 Security requirements for information technology resources.
1352.242–70 Postaward conference.
1352.245–70 Government furnished property.
1352.246–70 Place of acceptance.
1352.270–70 Period of performance.
1352.270–71 Pre-bid/pre-proposal conference and site visit.
1352.271–70 Inspection and manner of doing work.
1352.271–71 Method of payment and invoicing instructions for ship repair.
1352.271–72 Additional item requirements (AIR)—growth work.
1352.271–73 Schedule of work.
1352.271–74 Foreseeable cost factors pertaining to different shipyard locations.
1352.271–75 Delivery and shifting of the vessel.
1352.271–76 Performance.
1352.271–77 Delays.
1352.271–78 Minimization of delay due to Government furnished property.
1352.271–79 Liability and insurance.
1352.271–80 Title.
1352.271–81 Discharge of liens.
1352.271–82 Department of Labor occupational safety and health standards for ship repair.
1352.271–83 Government review, comment, acceptance and approval.
1352.271–84 Access to the vessel.
1352.271–85 Documentation of requests for equitable adjustment.
1352.271–86 Lay days.
1352.271–87 Changes—ship repair.
1352.271–88 Guarantees.
1352.271–89 Temporary services.
1352.271–90 Insurance requirements.

Subpart 1352.3—Provisions and Clauses Matrix

1352.301 Solicitation provisions and contract clauses (Matrix).

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

1352.000 Scope of part.

This part sets forth solicitation provisions and contract clauses, in addition to those prescribed in FAR Part 52, for use in DOC acquisitions.

Subpart 1352.1—Instructions for Using Provisions and Clauses

1352.102 Incorporating provisions and clauses.

As stated in the FAR, provisions and clauses should be incorporated by reference in solicitations and contracts to the maximum practical extent, rather than being incorporated in full text. Incorporation by reference is the listing only by title, regulatory citation, and date of the provision or clause. The full text of the referenced solicitation provision or contract clause is contained in the Code of Federal Regulations (CFR). FAR provisions and clauses are located at 48 CFR Chapter 1 and CAM provisions and clauses are located at 48 CFR Chapter 13.

Subpart 1352.2—Text of Provisions and Clauses

1352.200 Scope of subpart.

This subpart sets forth the text of all CAR provisions and clauses and provides a cross-reference to the location in the CAR that prescribes their use.

1352.201–70 Contracting Officer's Authority.

As prescribed in 48 CFR 1301.602–170, insert the following clause:

CONTRACTING OFFICER'S AUTHORITY.

The Contracting Officer is the only person authorized to make or approve any changes in any of the requirements of this contract, and, notwithstanding any provisions contained elsewhere in this contract, the said authority remains solely in the Contracting Officer. In the event the contractor makes any changes at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract terms and conditions, including price.

(End of clause)

1352.201–71 Ratification release.

As prescribed in 48 CFR 1301.602–3, insert the following clause:

RATIFICATION RELEASE (DATE)

(a) The Government agrees to pay the contractor $_____ for the following items/services:

_____

_____

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

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

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

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

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

Contractor's Signature: _____

Date: _____

(End of clause)

1352.201–72 Contracting Officer's Representative (COR).

As prescribed in 48 CFR 1301.670–70, insert the following clause:

CONTRACTING OFFICER'S REPRESENTATIVE (COR) (DATE)

(a) _____ is hereby designated as the Contracting Officer's Representative (COR). The COR may be changed at any time by the Government without prior notice to the contractor by a unilateral modification to the contract. The COR is located at:

_____

_____

_____

Phone Number: _____

E-mail: _____

(b) The responsibilities and limitations of the COR are as follows:

(1) The COR is responsible for the technical aspects of the contract and serves as technical liaison with the contractor. The COR is also responsible for the final inspection and acceptance of all deliverables and such other responsibilities as may be specified in the contract.

(2) The COR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the contract price, terms or conditions. Any contractor request for changes shall be

referred to the Contracting Officer directly or through the COR. No such changes shall be made without the express written prior authorization of the Contracting Officer. The Contracting Officer may designate assistant or alternate COR(s) to act for the COR by naming such assistant/alternate(s) in writing and transmitting a copy of such designation to the contractor.

(End of clause)

1352.208–70 Restrictions on printing and duplicating.

As prescribed in 48 CFR 1308.802–70, insert the following clause:

RESTRICTIONS ON PRINTING AND DUPLICATING (DATE)

(a) The contractor is authorized to duplicate or copy production units provided the requirement does not exceed 5,000 production units of any one page or 25,000 production units in the aggregate of multiple pages. Such pages may not exceed a maximum image size of 10¾ by 14¼ inches. A "production unit" is one sheet, size 8½ x 11 inches (215 x 280 mm), one side only, and one color ink. Production unit requirements are outlined in the Government Printing and Binding Regulations.

(b) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the contractor to respond to the terms of the contract).

(c) Costs associated with printing, duplicating, or copying in excess of the limits in paragraph (a) of this clause are unallowable without prior written approval of the Contracting Officer. If the contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or substantial duplicating or copying, it shall immediately provide written notice to the Contracting Officer and request approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with FAR 8.802.

(d) The contractor shall include in each subcontract which may involve a requirement for any printing, duplicating, and copying in excess of the limits specified in paragraph (a) of this clause, a provision substantially the same as this clause, including this paragraph (d).

(End of clause)

1352.209–70 Potential organizational conflict of interest.

As prescribed in 48 CFR 1309.507–1(a), insert the following provision, modified appropriately:

POTENTIAL ORGANIZATIONAL CONFLICT OF INTEREST (DATE)

(a) There is a potential organizational conflict of interest (*see* FAR Subpart 9.5, Organizational and Consultant Conflicts of Interest) due to [*state the nature of the potential conflict*]. Accordingly:

(1) Restrictions are needed to ensure that (*state the nature of the proposed restraint and the applicable time period*).

(2) As a part of the proposal, the offeror shall provide the Contracting Officer with complete information regarding previous or ongoing work that is in any way associated with the contemplated acquisition.

(b) If award is made to the offeror, the resulting contract may include an organizational conflict of interest limitation applicable to subsequent Government work, at either a prime contract level, at any subcontract tier, or both. During evaluation of proposals, the Government may, after discussions with the offeror and consideration of ways to avoid the conflict of interest, insert a provision in the resulting contract that shall disqualify the offeror from further consideration for award of specified future contracts.

(c) The organizational conflict of interest clause included in this solicitation may be modified or deleted during negotiations.

Alternate I (DATE). At the discretion of the Contracting Officer, substitute the following paragraph (b) for paragraphs (b) and (c) in the basic provision:

(b) The organizational conflict of interest clause in this solicitation may not be modified or deleted.

(End of clause)

1352.209–71 Limitation of future contracting.

As prescribed in 48 CFR 1309.507–2(a), insert the following clause:

LIMITATION OF FUTURE CONTRACTING (DATE)

(a) The following restrictions and definitions apply to prevent conflicting roles, which may bias the contractor's judgment or objectivity, or to preclude the contractor from obtaining an unfair competitive advantage in concurrent or future acquisitions.

(1) Descriptions or definitions:

(i) "Contractor" means the business entity receiving the award of this contract, its parents, affiliates, divisions and subsidiaries, and successors in interest.

(ii) "Development" means all efforts towards solution of broadly defined problems. This may encompass research, evaluating technical feasibility, proof of design and test, or engineering of programs not yet approved for acquisition or operation.

(iii) "Proprietary Information" means all information designated as proprietary in accordance with law and regulation, and held in confidence or disclosed under restriction to prevent uncontrolled distribution. Examples include limited or restricted data, trade secrets, sensitive financial information, and computer software; and may appear in cost and pricing data or involve classified information.

(iv) "System" means the system that is the subject of this contract.

(v) "System Life" means all phases of the system's development, production, or support.

(vi) "Systems Engineering" means preparing specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design.

(vii) "Technical Direction" means developing work statements, determining parameters, directing other contractors' operations, or resolving technical controversies.

(2) Restrictions: The contractor shall perform systems engineering and/or technical direction, but will not have overall contractual responsibility for the system's development, integration, assembly and checkout, or production. The parties recognize that the contractor shall occupy a highly influential and responsible position in determining the system's basic concepts and supervising their execution by other contractors. The contractor's judgment and recommendations must be objective, impartial, and independent. To avoid the prospect of the contractor's judgment or recommendations being influenced by its own products or capabilities, it is agreed that the contractor is precluded for the life of the system from award of a DOC contract to supply the system or any of its major components, and from acting as a subcontractor or consultant to a DOC supplier for the system or any of its major components.

Alternate I (DATE). As prescribed in CFR 1309.507–2(a)(2), either substitute paragraph (a)(2) of the basic clause with one or both of the following paragraphs, or use one or both in addition to the basic paragraph (a)(2).

(a)(2)(i) The contractor shall prepare and submit complete specifications for nondevelopmental items to be used in a competitive acquisition. The contractor shall not furnish these items to DOC, either as a prime contractor or subcontractor, for the duration of the initial production contract plus [*insert a specific period of time or an expiration date*].

(ii) The contractor shall either prepare or assist in preparing a work statement for use in competitively acquiring the [*identify the system or services*], or provide material leading directly, predictably, and without delay to such a work statement. The contractor may not supply [*identify the services, the system, or the major components of the system*] for a period [*state the duration of the constraint, however, the duration of the initial production contract shall be the minimum*], as either the prime or subcontractor unless it becomes the sole source, has participated in the design or development work, or more than one contractor has participated in preparing the work statement.

Alternate II (DATE). As prescribed in 48 CFR 1309.507–2(a)(3), either substitute paragraph (a) (2) of the basic clause with the following paragraph, or add the following in addition to the basic restriction. Redesignate the paragraphs as needed if more than one restriction applies.

(a)(2) The contractor shall participate in the technical evaluation of other contractors' proposals or products. To ensure objectivity, the contractor is precluded from award of any supply or service contract or subcontract for the system or its major components. This restriction shall be effective for (*insert a definite period of time*).

Alternate III (DATE). As prescribed in 48 CFR 1309.507–2(a)(4), add the following paragraph (b) to the basic clause:

(b) The contractor may gain access to proprietary information of other companies during contract performance. The contractor agrees to enter into company-to-company agreements to protect another company's information from unauthorized use or disclosure for as long as it is considered proprietary by the other company, and to refrain from using the information for any purpose other than that for which it was furnished. For information purposes, the contractor shall furnish copies of these agreements to the Contracting Officer. These agreements are not intended to protect information which is available to the Government or to the contractor from other sources and information furnished voluntarily without restriction.

Alternate IV (DATE). As prescribed in 48 CFR 1309.507–2(a)(5), add the following paragraph (b) to the basic clause substantially as written. If Alternate III is also used, designate this paragraph (c).

(b) The contractor agrees to accept and to complete all issued task orders, and to not contract with Government prime contractors or first-tier subcontractors in such a way as to create an organizational conflict of interest.

Alternate V (DATE). As prescribed in 48 CRF 1309.507–2(a)(6), add the following paragraph (b) to the basic clause. If more than one Alternate is used, redesignate this paragraph accordingly.

(b) The contractor agrees to accept and to complete issued delivery orders, provided that no new organizational conflicts of interest are created by the acceptance of such orders. The Contracting Officer shall identify any and all organizational conflicts of interest in each order. The contractor shall not contract with Government prime contractors or first-tier subcontractors in such a way as to create an organizational conflict of interest.

Alternative VI (DATE). As prescribed in 48 CFR 1309.507–2(a)(7), add the following paragraph (b) to the basic clause. If either Alternate III or IV or both are used, redesignate this paragraph accordingly.

(b) The above restrictions shall be included in all subcontracts, teaming arrangements, and other agreements calling for performance of work which is subject to the organizational conflict of interest restrictions identified in this clause, unless excused in writing by the Contracting Officer.

(End of clause)

1352.209–72 Restrictions against disclosure.

As prescribed in 48 CFR 1309.507–2(b), insert the following clause:

RESTRICTIONS AGAINST DISCLOSURE (DATE)

(a) The contractor agrees, in the performance of this contract, to keep the information furnished by the Government or acquired/developed by the contractor in performance of the contract and designated by the Contracting Officer or Contracting Officer's Representative, in the strictest confidence. The contractor also agrees not to publish or otherwise divulge such information, in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the contractor's possession, to those employees needing such information to perform the work described herein, *i.e.,* on a "need to know" basis. The contractor agrees to immediately notify the Contracting Officer in writing in the event that the contractor determines or has reason to suspect a breach of this requirement has occurred.

(b) The contractor agrees that it will not disclose any information described in subsection (a) to any person unless prior written approval is obtained from the Contracting Officer. The contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

(End of clause)

1352.209–73 Compliance with the laws.

As prescribed in 48 CFR 1309.507–2(c), insert the following clause:

COMPLIANCE WITH THE LAWS (DATE)

The contractor shall comply with all applicable laws, rules and regulations which deal with or relate to performance in accord with the terms of the contract.

(End of clause)

1352.209–74 Organizational conflict of interest.

As prescribed in 48 CFR 1309.507–2(d), insert the following clause:

ORGANIZATIONAL CONFLICT OF INTEREST (DATE)

(a) *Purpose.* The purpose of this clause is to ensure that the contractor and its subcontractors:

(1) Are not biased because of their financial, contractual, organizational, or other interests which relate to the work under this contract, and

(2) Do not obtain any unfair competitive advantage over other parties by virtue of their performance of this contract.

(b) *Scope.* The restrictions described herein shall apply to performance or participation by the contractor, its parents, affiliates, divisions and subsidiaries, and successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, co-sponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(c) *Warrant and Disclosure.* The warrant and disclosure requirements of this paragraph apply with full force to both the contractor and all subcontractors. The contractor warrants that, to the best of the contractor's knowledge and belief, there are no relevant facts or circumstances which would give rise to an organizational conflict of interest, as defined in FAR Subpart 9.5, and that the contractor has disclosed all relevant information regarding any actual or potential conflict. The contractor agrees it shall make an immediate and full disclosure, in writing, to the Contracting Officer of any potential or actual organizational conflict of interest or the existence of any facts that may cause a reasonably prudent person to question the contractor's impartiality because of the appearance or existence of bias or an unfair competitive advantage. Such disclosure shall include a description of the actions the contractor has taken or proposes to take in order to avoid, neutralize, or mitigate any resulting conflict of interest.

(d) *Remedies.* The Contracting Officer may terminate this contract for convenience, in whole or in part, if the Contracting Officer deems such termination necessary to avoid, neutralize or mitigate an actual or apparent organizational conflict of interest. If the contractor fails to disclose facts pertaining to the existence of a potential or actual organizational conflict of interest or misrepresents relevant information to the Contracting Officer, the Government may terminate the contract for default, suspend or debar the contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(e) *Subcontracts.* The contractor shall include a clause substantially similar to this clause, including paragraphs (f) and (g), in any subcontract or consultant agreement at any tier expected to exceed the simplified acquisition threshold. The terms "contract," "contractor," and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.

(f) *Prime Contractor Responsibilities.* The contractor shall obtain from its subcontractors or consultants the disclosure required in FAR Part 9.507–1, and shall determine in writing whether the interests disclosed present an actual, or significant potential for, an organizational conflict of interest. The contractor shall identify and avoid, neutralize, or mitigate any subcontractor organizational conflict prior to award of the contract to the satisfaction of the Contracting Officer. If the subcontractor's organizational conflict cannot be avoided, neutralized, or mitigated, the contractor must obtain the written approval of the Contracting Officer prior to entering into the subcontract. If the contractor becomes aware of a subcontractor's potential or actual organizational conflict of interest after contract award, the contractor agrees that the Contractor may be required to eliminate the subcontractor from its team, at the contractor's own risk.

(g) *Waiver.* The parties recognize that this clause has potential effects which will survive the performance of this contract and that it is impossible to foresee each circumstance to which it might be applied in the future. Accordingly, the contractor may at any time seek a waiver from the Head of the Contracting Activity by submitting such waiver request to the Contracting Officer, including a full written description of the requested waiver and the reasons in support thereof.

(End of clause)

1352.209–75 Title 13 and non-disclosure requirements.

As prescribed in 48 CFR 1309.507–2(e), insert the following clause:

TITLE 13 AND NON-DISCLOSURE REQUIREMENTS (DATE)

The Census Bureau's data are protected by Title 13 of the United States Code. The contractor may not use Title 13 data for any purpose other than the intended purpose for which it is supplied or obtained. All contractor personnel who will have access to Title 13 data must take an oath and complete the Census Bureau Form BC–1759 (Special Sworn Status) that requires nondisclosure of Title 13 data. An authorized Census employee or a Notary Public must administer the oath of nondisclosure.

(End of clause)

1352.213–70 Evaluation utilizing simplified acquisition procedures.

As prescribed in 48 CFR 1313.106–2–70, insert the following provision:

EVALUATION UTILIZING SIMPLIFIED ACQUISITION PROCEDURES (DATE)

The Government will issue an order resulting from this request for quotation to the responsible offeror whose quotation results in the best value to the Government, considering both price and non-price factors. The following factors will be used to evaluate quotations:

[This section is to be tailored to conform to individual procurements. Text is provided as an example only. Stating relative importance of the evaluation factors is not required.]

(1) Personnel Qualifications. The experience, education, and qualifications of personnel proposed to work on the contract will be evaluated to determine their ability to perform their proposed duties.

(2) Technical Approach and Capability. The offeror's approach to performing contract requirements and its capability to successfully perform the contract will be evaluated.

(3) Past Performance. The offeror's past performance on related contracts will be evaluated to determine, as appropriate, successful performance of contract requirements, quality and timeliness of delivery of goods and services, cost management, communications between contracting parties, proactive management and customer satisfaction.

(4) Price.

(End of clause)

1352.213–71 Instructions for submitting quotations under the simplified acquisition threshold—non-commercial.

As prescribed in 48 CFR 1313.302–1–70, insert the following provision:

INSTRUCTIONS FOR SUBMITTING QUOTATIONS UNDER THE SIMPLIFIED ACQUISITION THRESHOLD—NON-COMMERCIAL (DATE)

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code and small business size standard for this acquisition is _____.

(b) *Submission of quotations.* Submit quotations to the office specified in this solicitation at or before the exact time specified in this solicitation. At a minimum, quotations must show—

(1) The solicitation number;

(2) The name, address, and telephone number of the offeror;

(3) Acknowledgment of solicitation amendments;

(4) A technical description showing that the offeror can supply the requirements in the specifications or statement of work in sufficient detail to allow the Government to evaluate the quotation in accordance with the evaluation factors stated in the solicitation.

(5) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and reference information (including contract numbers, points of contact with telephone numbers and other relevant information).

(6) Price and any supporting details for the price, as requested in the solicitation.

(c) Offerors are responsible for submitting quotations, and any modifications thereto, so as to reach the Government office designated in the solicitation by the time specified. The offeror's initial quotation should contain the offeror's best terms from a price and technical standpoint. The Government may reject any or all quotations if such action is in the public interest; accept other than the lowest quotation; and waive informalities and minor irregularities in quotations received.

(End of clause)

1352.215–70 Proposal preparation.

As prescribed in 48 CFR 1315.204–570(a)(1), insert the following provision, tailored as applicable:

PROPOSAL PREPARATION (DATE)

(a) General Instructions. Proposals are expected to conform to solicitation provisions and be prepared in accordance with this section. To aid in evaluation, the proposal shall be clearly and concisely written, neatly presented, indexed (cross-indexed as appropriate), and logically assembled. All pages of each part shall be appropriately numbered and identified with the name of the offeror, the date of the offer, and the solicitation number. Each volume shall be clearly marked by volume number and title.

(b) *Overall Arrangement of Proposal.* (1) VOLUME I—BUSINESS PROPOSAL

(i) Volume I, Business Proposal, consists of the actual offer to enter into a contract to perform the desired work. It also includes required representations, certifications, and acknowledgments, if applicable; justifications for noncompetitive proposed subcontracts; identification of technical data to be withheld; and any other required administrative information.

(ii) Format and Content. Volume I, Business Proposal, shall include the following documents (in the order listed):

(A) Proposal Form:

(*1*) Use of the Form—The Proposal Form (Standard Form 33 or 1449), is to be executed fully and used as the cover sheet (or first page) of Volume I. Include three (3) original signed copies of the form in the original Volume I.

(*2*) Acceptance Period—The acceptance period entered on the Proposal Form by the offeror shall not be less than that prescribed in the solicitation, which shall apply if no other period is offered.

(*3*) Signature Authority—The person signing the Proposal Form must have the authority to commit the offeror to all of the provisions of the proposal, fully recognizing that the Government has the right, by terms of the Solicitation, to make an award without discussion if it so elects.

(B) Other documentation identified in Section (A) above. The offeror shall submit one original of Volume I, marked as such.

(2) VOLUME II—TECHNICAL PROPOSAL

(i) *General.* (A) Volume II, technical proposal, consists of the offeror's proposal delineating its capabilities and how it intends to perform contract requirements. The Technical proposal will be evaluated in accord with the criteria contained in Section M.

(B) In order that the technical proposal may be evaluated strictly on the merit of the material submitted, no contractual price information is to be included in Volume II. However, the type and quantity of labor and materials is to be included in the Technical Proposal, without any associated cost information.

(C) The technical proposal must be typed, double-spaced, with one inch margins, using elite font, 12 pitch type (or equivalent) and printed, unreduced in size, on 8½″ by 11″ paper, not exceeding ____ pages, single-sided, exclusive of resumes and related corporate experience documentation. Any pages in excess of ____ will be disregarded, and will not be included in the proposal evaluation. Failure of the offeror to comply with the page limitations, resulting in the excess pages not being evaluated, shall not constitute grounds for a protest.

(ii) Format and Content. Volume II, Technical Proposal, shall include the following contents:

(A) Table of Contents

(B) List of Tables and Figures

(C) Summary of Technical Proposal

(D) Technical Proposal

(E) Exceptions and Deviations. These major headings may be subdivided or supplemented by the offeror as appropriate.

(*1*) Summary. This section shall provide a summary that addresses each of the technical evaluation factors set out in Section M.

(*2*) Technical Proposal. The offeror shall clearly address each of the technical evaluation criteria in Section M, and, at a minimum, cover each subfactor.

(*3*) Exceptions and Deviations. This section shall identify and explain any exceptions or

deviations taken to any part of the solicitation or conditional assumptions made with respect to the technical requirements of the solicitation. Offerors should note that taking exceptions to the Government's requirements may indicate an unwillingness or inability to perform the contract, and the proposal may be evaluated as such.

(iii) Specific areas to be addressed:

[This section is to be tailored to conform to the technical evaluation factors. Text is provided as an example. Provide instructions concerning what information is required in order to evaluate proposals in accord with the evaluation factors. Do not request information that is not covered in an evaluation factor.]

Evaluation Factor 1—Technical Approach. Provide information on how the project is to be organized, staffed, and managed that demonstrates the offeror's understanding and effective management of important events or tasks. If applicable, the offeror shall (i) describe the facilities and equipment which will be used in the performance of the contract, and (ii) how the management and coordination of consultant and subcontractor efforts will be accomplished. Fully discuss how the contract requirements will be met and the means used to accomplish them. Merely repeating the contract requirements and stating that they will be accomplished, without discussing how the offeror will accomplish them, is not acceptable.

Evaluation Factor 2—Experience. In a general fashion, describe the offeror's experience and qualifications to perform the contract requirements. Explain how the experience provides confidence that the offeror can perform all contract requirements.

Evaluation Factor 3—Key Personnel. Provide the names, titles, and a description of the duties of those individuals proposed as key personnel to be assigned to the contract. For each key person, submit a resume that provides information concerning their education, background, recent work experience, and accomplishments. Specify the approximate percentage of time each individual will be available for this project, and, if necessary, explain why the key person possesses the qualifications to perform the proposed position.

Evaluation Factor 4—Past Performance. Complete the Past Performance Questionnaire (Attachment X) for all contracts containing requirements similar in scope those in the Statement of Work performed in whole or part over the last ____ years. References can include both Government and commercial contracts and subcontracts.

The offeror shall submit one original of Volume II, marked as such, and _____ copies.

(3) Volume III—Price/cost proposal

(i) Price/Cost proposals must generally adhere to the pricing structure established in Section B, Schedule of Prices. The offeror shall submit one original of Volume III, marked as such, and _____ copies.

[INSERT FOR COST TYPE CONTRACTS:]

(ii) The offeror must also submit the following detailed information to support its proposed costs, as applicable:

(A) Direct Labor: Breakdown of direct labor cost by named person or labor category including number of labor-hours and current actual average hourly rates based on a work year of 2,080 hours. Indicate whether current rates or escalated rates are used. If escalation is included, state the degree (percent) and methodology. Direct labor or levels of effort are to be identified as labor-hours and not as a percentage of an individual's time. Indicate fringe benefit rate, if separate from indirect cost rate.

(B) Other Direct Costs: Specify the amount proposed for duplication/reproduction, meetings and conferences, postage, communication and any other applicable items. Travel, subsistence and local transportation shall be supported with a breakdown, which shall include: number of trips anticipated, number of person days, cost-per-trip-per person, destination(s) proposed, number of person(s) scheduled for travel, mode of transportation, and mileage allowances, if privately-owned vehicles will be used.

(C) Materials: Cost breakdown of materials or equipment must be supported with the methodology used and vendor quotations supplied as applicable.

(D) Consultants: If consultants are proposed, state the total estimated price of the services to be required and the consultant's quoted daily or hourly rate. Include Consulting Agreements entered into between consultant(s) and the offeror, or invoices submitted by consultant(s) for similar services previously provided to the offeror.

(E) Subcontracts: If proposed, cost information for each subcontractor shall be furnished in the same format and level of detail as prescribed for the prime offeror. Additionally, in relation to such subcontracts, the offeror shall submit the following information:

(*1*) A description of the items to be furnished by the subcontractor;

(*2*) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the extent of competition;

(*3*) The proposed subcontract price and cost detail and performance/delivery schedule; and

(*4*) Identification of the type of subcontract to be used.

(F) Indirect Rates: Offerors lacking Government-approved indirect cost rates must provide detailed background data indicating the cost elements included in the applicable pool and a statement that such treatment is in accordance with the company's established accounting practice. Offerors with established rate agreements with cognizant Federal agencies shall submit one copy of such agreements.

(G) Profit: Specify the profit proposed and the rationale justifying the amount of profit.

[INSERT FOR FIXED-PRICE TYPE CONTRACTS:]

(iii) Each offeror's price proposal must be based on the offeror's own technical proposal, the Government's specifications, and other contractual requirements. If the prices to be used are based on a published price list or catalog, the offeror shall so state, and provide a copy of the document with its price proposal. If the prices are to be based on established market prices, not otherwise published, or are prices applicable only to the proposed contract, the offeror shall so state.

(iv) The Government expects that this contract will be awarded based upon adequate price competition. However, in order to determine that offered prices are fair and reasonable, the Government reserves the right to request that the offeror to provide cost breakdowns to support proposed prices. Information to support unit prices should include, but not be limited to, the following:

(A) Salary/wage information with associated payroll expenses, for personnel to be used in performance of the contract;

(B) Cost for equipment, supplies, and consumable materials;

(C) A breakout of related support costs, such as equipment maintenance, rental, transportation, *etc.*;

(D) Overhead costs;

(E) General Administrative expenses; and

(F) Profit

(End of clause)

1352.215–71 Instructions for oral presentations.

As prescribed in 48 CFR 1315.204–570(a)(2), insert the following provision:

INSTRUCTIONS FOR ORAL PRESENTATIONS (DATE)

The Government intends to conduct oral presentations with the offerors in the competitive range as part of the evaluation process.

Oral presentations will be conducted at the following location:

[INSERT LOCATION]

The Contracting Officer will determine the order of oral presentations and the schedule. The Contracting Officer will contact each offeror to schedule the date and time for oral presentations and provide detailed instructions. Once a presentation date and time are confirmed, rescheduling is at the discretion of the Contracting Officer.

(End of clause)

1352.215–72 Inquiries.

As prescribed in 48 CFR 1315.204–570(a)(3), insert the following provision:

INQUIRIES (DATE)

Offerors must submit all questions concerning this solicitation in writing to ____. Questions should be received no later than ____ calendar days after the issuance date of this solicitation. Any responses to questions will be made in writing, without identification of the questioner, and will be included in an amendment to the solicitation. Even if provided in other form, only the question responses included in the amendment to the solicitation will govern performance of the contract.

(End of clause)

1352.215–73 Evaluation quantities—indefinite quantity contract.

As prescribed in 48 CFR 1315.204–570(b)(1), insert the following provision:

EVALUATION QUANTITIES—INDEFINITE QUANTITY CONTRACT (DATE)

To evaluate offers for award purposes, the Government will apply the offeror's proposed fixed-prices/rates to the estimated quantities included in the solicitation (and add to this amount other direct costs, if applicable).

(End of clause)

1352.215–74 Best value evaluation.

As prescribed in 48 CFR 1315.204–570(b)(2), insert the following provision:

BEST VALUE EVALUATION (DATE)

(a) Award will be made to the offeror: whose offer conforms to the solicitation requirements; who is determined responsible in accordance with FAR Subpart 9.1 by possessing the financial and other capabilities to fulfill the requirements of the contract; and whose proposal is judged, by an integrated assessment of price/cost and non-price evaluation factors, to provide the best value to the Government in accordance with CAR 1352.215–75, *Evaluation Criteria.*

(b) The Government intends to award [specify "a single contract" or "multiple contracts"] in response to the solicitation. The Government reserves the right not to award a contract depending on the quality of the proposals submitted and the availability of funds.

(c) Evaluation of Proposals.

(1) Initial Evaluation of Proposals. All offers received will be evaluated in accordance with the stated evaluation factors. The Government reserves the right to make an award without discussions based solely upon initial proposals. Therefore, offerors should ensure that their initial proposal constitutes their best offer in terms of both price and the technical solution being proposed.

If award is not made upon initial proposals, then the Contracting Officer will establish a competitive range comprised of the most highly rated proposals. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly-rated proposals. Only those offerors in the competitive range will be offered an opportunity to participate further in the procurement.

(2) Discussions/Final Proposal Revisions. The Contracting Officer will engage in discussions with all offerors in the competitive range in accordance with FAR 15.306. At the conclusion of discussions, a final common cut-off date for submission of final proposal revisions will be established. Those offerors remaining in the competitive range will be notified to submit Final Proposal Revisions.

(3) Final Evaluation of Offers. A final proposal evaluation will be performed after receipt of Final Proposal Revisions.

(End of clause)

1352.215–75 Evaluation criteria.

As prescribed in 48 CFR 1315.204–570(b)(2) and (3), insert the following provision:

EVALUATION CRITERIA (DATE)

[This section is to be tailored to conform to individual procurements. Text is provided as an example only.]

In determining which proposal provides the best value to the Government, non-price (technical) evaluation factors are [significantly more important/somewhat more important/approximately equal in importance/somewhat less important/ significantly less important] than evaluated price.

[Insert relative importance among the technical evaluation factors.]

Based upon the results of the integrated assessment of the technical and cost/price proposals, the Government may make an award to other than the lowest-priced offeror or the offeror with the highest technical score if the source selection official determines that to do so would result in the best value to the Government.

(a) Technical Evaluation Factors.

Factor 1—TECHNICAL APPROACH. The proposal will be evaluated on how the offeror intends to organize, staff and manage the contract and the means that will be used to accomplish the contract requirements. The degree to which the proposal demonstrates an understanding of the requirements will be evaluated, as well as the offeror's planned management of consultants and subcontractors, if applicable.

Factor 2—EXPERIENCE. The offeror's background, experience, and qualifications will be assessed to determine the likelihood that that offeror can successfully perform the contract requirements and the degree of the risk of non-performance.

Factor 3—KEY PERSONNEL. The education, experience, and accomplishments of key personnel will be evaluated to determine the degree to which they possess the qualifications to perform their proposed duties under the contract.

Factor 4—PAST PERFORMANCE. The offeror's past performance on related contracts will be evaluated to determine, as appropriate, successful performance of contract requirements, quality and timeliness of delivery of goods and services, effective management of subcontractors, cost management, level of communication between the contracting parties, proactive management and customer satisfaction.

The Government reserves the right to assess the past performance of proposed subcontractors.

The Government will use its discretion to determine the sources of past performance information used in the evaluation, and the information may be obtained from references provided by the offeror, the agency's knowledge of contractor performance, other government agencies or commercial entities, or past performance databases.

If an offeror does not have a history of relevant contract experience, or if past performance information is not available, the offeror will receive a neutral past performance rating; however, an offeror without a history of relevant experience may receive a lowered rating for the experience evaluation factor.

(b) Cost/Price Evaluation.

(1) The proposed prices/costs will be evaluated but not scored. The cost evaluation will determine whether the proposed costs are realistic, complete, and reasonable in relation to the solicitation requirements. Proposed costs must be entirely compatible with the technical proposal.

(2) The Government may use the results of cost/price realism analysis to adjust the offeror's proposal to a most probable cost to the Government. The analysis may include information from a government auditing agency, Government technical personnel, and other sources.

(End of clause)

1352.215–76 Cost or pricing data.

As prescribed in 48 CFR 1315.204–570(b)(4), insert the following provision:

COST OR PRICING DATA

Additional Instructions for Preparation of Cost/Price Proposals

(a) *General.* In addition to the information required by CAR 1352.215–70, the cost/price proposal must contain an explanation of the offeror's and proposed subcontractors' fully burdened rates, including direct salary rates, overhead rates, and profit; and information regarding other direct costs.

(b) *Specific Requirements.* (1) Direct Salary Rates: The offeror shall list the categories of professional or technical personnel required to perform the Statement of Work. A brief definition of the education and experience requirements which qualify an employee for inclusion in a listed category should be provided. Further, if some proposed labor categories are classified by multiple grades within a given discipline (*e.g.,* Architect I and II, or Senior and Junior Engineer), a brief explanation as to how they are differentiated shall be provided.

(2) The offeror, and major subcontractors, should provide individual rates for key personnel. Designation of an individual as a key person is subject to agreement of the parties. Where no key personnel are listed, category average rates are appropriate. Rates should be provided by year for the life of the contract. If rates are escalated, the degree (percent) and methodology must be shown. Escalation increases should reflect recent experience or established personnel policy. Types of salary increases given—merit, cost of living, *etc.*—should be discussed.

(3) Overhead Costs. Generally, the offeror's accounting system and estimating practices will determine the method used to allocate overhead costs. The offeror's established practices, if in accordance with generally accepted accounting principles, will be accepted. Proposed overhead rates should represent the offeror's best estimate of the rates to be experienced during the contract period as projected by company budgets or by recent experience adjusted for factors which will influence trends. A narrative statement outlining the offeror's policies and practices for accumulating overhead costs and the method used to compute the

proposed rate or rates is required. In the case of multi-branch firms, joint ventures or affiliates, it is expected that overhead costs applicable to the specific location(s) where work is to be performed will be proposed. Company-wide, joint venture, or affiliate rate averages may not be appropriate. The rates should be tailored to the work location(s).

(4) Profit. (i) A fair and reasonable provision for profit cannot be made by simply applying a certain predetermined percentage to the total estimated cost. Rather, profit should be established as a percentage/dollar amount after considering such factors as:

(A) Degree of risk;

(B) Nature of the work to be performed;

(C) Joint venture responsibilities;

(D) Extent of offeror's investment;

(E) Subcontracting of work; and

(F) Other criteria discussed in FAR 15.404–4.

(ii) Separate percentage rates for profit are also required for major subcontractors.

(5) Markup. The offeror may request a markup on subcontract labor. If it does so, it should state the percentage and provide a justification for that figure.

(6) Other Direct Costs. The offeror shall briefly describe the following:

(i) Travel/Subsistence costs;

(ii) Subcontractor costs; and

(iii) How subcontracting costs were analyzed.

(c) Audit Reports. If the offeror or any subcontractor has been audited by a Government agency within the last two years, or has approved indirect cost rates, provide a copy of the audit report, or, if not available, the name, address, and telephone number of the audit office. Similarly, information on any Government-approved indirect cost rates should be provided.

(End of clause)

1352.216–70 Estimated and allowable costs.

As prescribed in 48 CFR 1316.307(a), insert the following clause:

ESTIMATED AND ALLOWABLE COSTS (DATE)

(a) Estimated Costs. The estimated cost of this contract is $_____ [insert total cost of contract], which consists of $_____ [insert amount of cost that is reimbursable] for reimbursable costs and $_____ [insert amount of fixed fee] for fixed/incentive fee. These costs shall be subject to the provisions of FAR clause 52.232–20, "Limitation of Cost," FAR clause 52.216–7, "Allowable Cost and Payments," and FAR clause 52.216–8, "Fixed Fee."

(b) Subject to Availability of Funds [Insert paragraph (b) when the contract is issued subject to the availability of funds].

"The amount of funding for this contract is $_____ [insert amount being funded], which consists of $_____ [insert amount of reimbursable costs funded] for reimbursable costs and $ _____ [insert amount of fixed fee funded] for Fixed/Incentive Fee. These costs shall be subject to the provisions of FAR 52.232–22, "Limitations of Funds.""

(c) Allowable Costs.

(1) Final annual indirect cost rate(s) and the appropriate base(s) shall be established in accordance with FAR Subpart 42.7, in effect for the period covered by the indirect cost rate proposal.

(2) Until final annual indirect cost rates are established for any period, the Government shall reimburse the contractor at billing rates established by the Contracting Officer (or cognizant Federal agency official) or auditor in accordance with FAR 42.704, subject to adjustment when the final rates are established. The established billing rates are currently as follows:

_____ [Insert billing rate]

(End of clause)

1352.216–71 Level of effort (cost-plus-fixed-fee, term contract).

As prescribed in 48 CFR 1316.307(b), insert the following clause:

LEVEL OF EFFORT (COST-PLUS-FIXED-FEE, TERM CONTRACT) (DATE)

(a) In performance of the effort directed in this contract, the contractor shall provide the total of Direct Productive Labor Hours (DPLH) as specified in Part I, Section B during the term specified in Section _____. DPLH is defined as actual work hours exclusive of vacation, holidays, sick leave, and other absences.

(b) Only the DPLH categories indicated below shall be charged directly to the contract. It is estimated that the DPLH will be expended approximately as follows:

Labor category	Base period	Option period I	Option period II	Option period III
xxxxxxxxxx	xxxx	xxxx	xxxx	xxxx
xxxxxxxxxx	xxxx	xxxx	xxxx	xxxx
Total Direct Labor	xxxx	xxxx	xxxx	xxxx

(c) The hours specified above are provided as estimates only. If the actual amount of hours incurred falls within 90% to 110% of this estimate, the fee shall not be adjusted.

(d) In the event that the contractor shall be required to provide less than 90% of the estimated DPLH, the fixed fee of the contract shall be equitably adjusted by unilateral modification to the contract. The fixed fee adjustment shall be based solely upon the difference between the DPLH actually provided and 90% of the estimated DPLH, calculated as follows:

Adjusted Fixed Fee = (Actual DPLH/(.9 × Estimated DPLH)) × Specified Fixed Fee

(e) In the event that the contractor shall be required to provide more than 110% of the estimated DPLH, the fixed fee of the Contract shall be equitably adjusted by unilateral modification to the Contract. The fixed fee adjustment shall be based solely upon the difference between the DPLH actually provided and 110% of the estimated DPLH, calculated as follows:

Adjusted Fixed Fee = (Actual DPLH/(1.1 × Estimated DPLH)) × Specified Fixed Fee

(f) These terms and conditions do not supersede the requirements of either FAR clause 52.232–20 "Limitation of Cost" or FAR clause 52.232–22 "Limitation of Funds."

(End of clause)

1352.216–72 Determination of award fee.

As prescribed in 48 CFR 1316.405–2, insert the following clause:

DETERMINATION OF AWARD FEE (DATE)

Based upon the quality of its performance and the results of the Government's performance evaluation, the contractor may earn an award fee.

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

[Insert appropriate information]

(b) A Performance Evaluation Plan shall be unilaterally established by the Government as part of the contract and used for the determination of award fees. This plan shall include the criteria that will be used to evaluate the contractor's performance and to determine the percentage of award fee (if any) available for each performance period.

(c) The criteria contained within the Performance Evaluation Plan may relate to:

(1) Quality of performance of the contract requirements;

(2) Effective management of the contract; and

(3) Cost controls.

(d) The Performance Evaluation Plan may be revised unilaterally by the Government at any time during the period of performance, however unless mutually-agreed to a revision shall not affect the current evaluation period. Notification of such changes shall be provided to the contractor [insert number] calendar days prior to the start of the evaluation period to which the change will apply.

(e) At the conclusion of each evaluation period, and in accordance with the performance evaluation plan, a determination of the amount of the award fee earned shall be made in writing to the contractor by the Government Fee Determination Official (FDO). The FDO's unilateral determination of the amount of award fee earned in any evaluation period or a determination that no fee was earned shall be conclusive.

(f) The contractor may submit a self-evaluation of its performance in an evaluation period. The FDO shall consider

the self-evaluation, as the FDO deems appropriate.

(g) The contractor shall submit a voucher for payment of any earned award fee.

(End of clause)

1352.216–73 Distribution of award fee.

As prescribed in 48 CFR 1316.406, insert the following clause:

DISTRIBUTION OF AWARD FEE (DATE)

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

[Insert appropriate information]

(b) Payment of the base fee and award fee shall be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee.

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

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

(End of clause)

1352.216–74 Task orders.

As prescribed in 48 CFR 1316.501–2–70, insert the following clause:

TASK ORDERS (DATE)

(a) In task order contracts, all work shall be initiated only by issuance of fully executed task orders issued by the Contracting Officer. The work to be performed under these orders must be within the scope of the contract. The Government is only liable for labor hours and costs expended under the terms and conditions of this contract to the extent that a fully executed task order has been issued and covers the required work and costs. Charges for any work not authorized shall be disallowed.

(b) For each task order under the contract, the Contracting Office shall send a request for proposal to the contractor(s). The request will contain a detailed description of the tasks to be achieved, a schedule for completion of the task order, and deliverables to be provided by the contractor.

(c) The contractor shall submit a proposal defining the technical approach to be taken to complete the task order, work schedule and proposed cost/price.

(d) After any necessary negotiations, the contractor shall submit a final proposal.

(e) Task orders will be considered fully executed upon signature of the Contracting Officer. The contractor shall begin work on the task order in accordance with the effective date of the order.

(f) The contractor shall notify the Contracting Officer of any instructions or guidance given that may impact the cost, schedule or deliverables of the task order. A formal modification to the task order must be issued by the Contracting Officer before any changes can be made.

(g) Task orders may be placed during the period of performance of the contract. Labor rates applicable to hours expended in performance of an order will be the contract rates that are in effect at the time the task order is issued.

(h) If multiple awards are made by the Government, the CO shall provide each awardee a fair opportunity to be considered for each task order over the micro-purchase threshold unless one of the exceptions at FAR 16.505(b) applies.

(End of Clause)

1352.216–75 Minimum and maximum contract amounts.

As prescribed in 48 CFR 1316.506(a), insert the following clause:

MINIMUM AND MAXIMUM CONTRACT AMOUNTS (DATE)

During the term of the contract, the Government shall place orders totaling a minimum of _____. The amount of all orders shall not exceed _____.

(End of clause)

1352.216–76 Placement of orders.

As prescribed in 48 CFR 1316.506(b), insert the following clause:

PLACEMENT OF ORDERS (DATE)

(a) The contractor shall provide goods and/or services under this contract only as directed in orders issued by authorized individuals. In accordance with FAR 16.505, each order will include:

(1) Date of order;

(2) Contract number and order number;

(3) Item number and description, quantity, and unit price or estimated cost or fee;

(4) Delivery or performance date;

(5) Place of delivery or performance (including consignee);

(6) Packaging, packing, and shipping instructions, if any;

(7) Accounting and appropriation data;

(8) Method of payment and payment office, if not specified in the contract;

(9) Any other pertinent information.

(b) In accordance with FAR 52.216–18, *Ordering,* the following individuals (or activities) are authorized to place orders against this contract:

_____

_____

(c) If multiple awards have been made, the contact information for the DOC task and delivery order ombudsman is _____.

(End of clause)

1352.216–77 Ceiling price.

As prescribed in 48 CFR 1316.601–70 and 1316.602–70, insert the following clause:

CEILING PRICE (DATE)

The ceiling price of this contract is $_____. The contractor shall not make expenditures nor incur obligations in the performance of this contract which exceed the ceiling price specified herein, except at the contractor's own risk.

(End of clause)

1352.219–70 Section 8(a) direct award (Deviation).

As prescribed in 48 CFR 1319.811–3(a), insert the following clause:

SECTION 8(A) DIRECT AWARD (DEVIATION) (DATE)

(a) This contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to a Partnership Agreement between the Small Business Administration (SBA) and the Department of Commerce (DOC). Accordingly, the SBA, even if not identified in Section A of this contract, is the prime contractor and retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is:

_____

_____

_____

[To be completed by the Contracting Officer at time of award]

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

(c) The 8(a) contractor agrees:

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

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

(End of Clause)]

1352.219–71 Notification to delay performance (Deviation).

As prescribed in 48 CFR 1319.811–3(b), insert the following clause:

NOTIFICATION TO DELAY PERFORMANCE (DEVIATION) (DATE)

The contractor shall not begin performance under this purchase order until 2 working days have passed from the date of its receipt. Unless the contractor receives notification from the Small Business Administration that it is ineligible for this 8(a) award, or otherwise receives instructions from the Contracting Officer, performance under this purchase order may begin on the third working day following receipt of the purchase order. If a determination of ineligibility is issued within the 2-day period, the purchase order shall be considered cancelled.

(End of clause)

1352.219–72 Notification of competition limited to eligible 8(a) concerns, Alternate III (Deviation).

As prescribed in 48 CFR 1319.811–3 (c), insert the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(a) CONCERNS, ALTERNATE III (DEVIATION) (DATE)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offers—

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

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

(d)(1) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(2) _____ [*insert name of contractor*] will notify the _____ [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

1352.227–70 Rights in data, assignment of copyright.

As prescribed in 48 CFR 1327.404–4(a), insert the following clause:

RIGHTS IN DATA, ASSIGNMENT OF COPYRIGHT (DATE)

In accordance with 48 CFR 52.227–17, Rights in Data—Special Works, the contractor agrees to assign copyright to data, including reports and other copyrightable materials, first produced in performance of this contract to the United States Government, as represented by the Secretary of Commerce.

(End of clause)

1352.228–70 Insurance coverage.

As prescribed in 48 CFR 1328.310–70(a), insert the following clause:

INSURANCE COVERAGE (DATE)

(a) *Workers Compensation and Employer's Liability.* The contractor is required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least $100,000 shall be required, except in states with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) *General liability.* (1) The contractor shall have bodily injury liability insurance coverage written on the comprehensive form of policy of at least $500,000 per occurrence.

(2) When special circumstances apply in accordance with FAR 28.307–2(b), Property Damage Liability Insurance shall be required in the amount of $_____ [insert zero unless special circumstances apply, if applicable, insert dollar amount.].

(c) *Automobile liability.* The contractor shall have automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage.

(d) *Aircraft public and passenger liability.* When aircraft are used in connection with performing the contract, the contractor shall have aircraft public and passenger liability insurance. Coverage shall be at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

(e) *Vessel liability.* When contract performance involves use of vessels, the Contractor shall provide, vessel collision liability and protection and indemnity liability insurance as determined by the Government.

(End of clause)

1352.228–71 Deductibles under required insurance coverage—cost reimbursement.

As prescribed in 48 CFR 1328.310–70(c), insert the following clause:

DEDUCTIBLES UNDER REQUIRED INSURANCE COVERAGE—COST REIMBURSEMENT (DATE)

(a) The contractor is required to present evidence of the amount of any deductibles in its insurance coverage.

(b) For any insurance required pursuant to *1352.228–70, Insurance Coverage,* the contractor's deductible is not allowable as a direct or indirect cost under this contract. The Government is not liable, and cannot be invoiced, for any losses up to the minimum amounts of coverage required in paragraphs (a) through (d) of clause 1352.228–70. If the contractor obtains an insurance policy with deductibles, the contractor, and not the Government, is responsible for any deductible amount up to the minimum amounts of coverage stated.

(c) If the contractor fails to follow all procedures stated in this subsection and in FAR 52.228–7(g), any amounts above the amount of the obtained insurance coverage which are not covered by insurance will not be reimbursable under the contract.

(End of clause)

1352.228–72 Deductibles under required insurance coverage—fixed price.

As prescribed in 48 CFR 1328.310–70(d), insert the following clause:

DEDUCTIBLES UNDER REQUIRED INSURANCE COVERAGE—FIXED PRICE (DATE)

When the Government is injured, wholly or partially as a result of the contractor's actions and such actions are covered by the insurance required by *1352.228–70, Insurance Coverage,* the Government is entitled to recover from the contractor the full amount of any such injury attributable to the contractor regardless of a deductible. The Contracting Officer may offset the amount of recovery against any payment due to the contractor.

(End of clause)

1352.228–73 Loss of or damage to leased aircraft

As prescribed in 48 CFR 1328.310–70(e) and 1328.310–70(f), insert the following clause:

LOSS OF OR DAMAGE TO LEASED AIRCRAFT (DATE)

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

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

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the contractor a sum equal to the

fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 1252.228–74, *Fair Market Value of Aircraft,* less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the contractor will be paid the fair market value of the aircraft as stated in the clause.

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

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

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

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

(End of clause)

1352.228–74 Fair market value of aircraft.

As prescribed in 48 CFR 1328.310–70(e) and 48 CFR 1328.310–70(g) insert the following in all applicable contracts for leased aircraft:

FAIR MARKET VALUE OF AIRCRAFT (DATE)

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

(a) $_____; or

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

(End of clause)

1352.228–75 Risk and indemnities.

As prescribed in 48 CFR 1328.310–70(e) and 48 CFR 1328.310–70(h), insert the following in all applicable contracts for leased aircraft:

RISK AND INDEMNITIES (DATE)

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

1352.228–76 Approval of group insurance plans.

As prescribed in 48 CFR 1328.310–70(i), insert the following clause:

APPROVAL OF GROUP INSURANCE PLANS (DATE)

Under cost-reimbursement contracts, before buying insurance under a group insurance plan, the contractor shall submit the plan for approval to the Contracting Officer. Any change in benefits provided under an approved plan that can reasonably be expected to increase significantly the cost to the Government shall require similar approval.

(End of clause)

352.231–70 Precontract costs.

As prescribed in 48 CFR 1331.205–32, insert the following clause:

PRECONTRACT COSTS (DATE)

The contractor is entitled to reimbursement for allowable, allocable, and reasonable costs incurred during the period of _____ to the award date of this contract in an amount not to exceed $_____.

(End of clause)

1352.231–71 Duplication of effort.

As prescribed in 48 CFR 1331.205–70, insert the following clause:

DUPLICATION OF EFFORT (DATE)

The contractor hereby certifies that costs for work to be performed under this contract and any subcontract hereunder are not duplicative of any costs charged against any other Government contract, subcontract, or other Government source. The contractor agrees to advise the Contracting Officer, in writing, of any other Government contract or subcontract it has performed or is performing which involves work directly related to the purpose of this contract. The contractor also certifies and agrees that any and all work performed under this contract shall be directly and exclusively for the use and benefit of the Government, and not incidental to any other work, pursuit, research, or purpose of the contractor, whose responsibility it will be to account for it accordingly.

(End of clause)

1352.233–70 Agency protests.

As prescribed in 48 CFR 1333.103(a), insert the following provision:

AGENCY PROTESTS (DATE)

(a) An agency protest may be filed with either: (1) The contracting officer, or (2) at a level above the contracting officer, with the appropriate agency Protest Decision Authority. *See* 64 FR 16,651 (April 6, 1999).

(b) Agency protests filed with the Contracting Officer shall be sent to the following address: [Insert Contracting Officer name and Address]

(c) Agency protests filed with the agency Protest Decision Authority shall be sent to the following address: [Insert appropriate Protest Decision Authority name and Address]

(d) A complete copy of all agency protests, including all attachments, shall be served upon the Contract Law Division of the Office of the General Counsel within one day of filing a protest with either the Contracting Officer or the Protest Decision Authority.

(e) Service upon the Contract Law Division shall be made as follows: U.S. Department of Commerce, Office of the General Counsel, Chief, Contract Law Division, Room 5893, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. FAX: (202) 482–5858.

(End of clause)

1352.233–71 GAO and Court of Federal Claims protests.

As prescribed in 48 CFR 1333.104–70(a), insert the following provision:

GAO AND COURT OF FEDERAL CLAIMS PROTESTS (DATE)

(a) A protest may be filed with either the Government Accountability Office (GAO) or the Court of Federal Claims unless an agency protest has been filed.

(b) A complete copy of all GAO or Court of Federal Claims protests, including all attachments, shall be served upon (i) the Contracting Officer, and (ii) the Contract Law Division of the Office of the General Counsel, within one day of filing a protest with either GAO or the Court of Federal Claims.

(c) Service upon the Contract Law Division shall be made as follows: U.S. Department of Commerce, Office of the General Counsel, Chief, Contract Law Division, Room 5893, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. FAX: (202) 482–5858.

(End of clause)

1352.235–70 Protection of human subjects.

As prescribed in 48 CFR 1335.006(a), insert the following provision:

PROTECTION OF HUMAN SUBJECTS (DATE)

(a) Research involving human subjects is not permitted under this award unless expressly authorized in writing by the Contracting Officer. Such authorization will specify the details of the approved research involving human subjects and will be incorporated by reference into this contract.

(b) The Federal Policy for the Protection of Human Subjects (the "Common Rule"), adopted by the Department of Commerce at 15 CFR Part 27, requires contractors to maintain appropriate policies and procedures for the protection of human subjects in research. The Common Rule defines a

"human subject" as a living individual about whom an investigator conducting research obtains data through intervention or interaction with the individual, or identifiable private information. The term "research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. The Common Rule also sets forth categories of research that may be considered exempt from 15 CFR Part 27. These categories may be found at 15 CFR 27.101(b).

(c) In the event the human subjects research involves pregnant women, prisoners, or children, the contractor is also required to follow the guidelines set forth at 45 CFR Part 46 Subpart B, C and D, as appropriate, for the protection of members of a protected class.

(d) Should research involving human subjects be included in the proposal, prior to issuance of an award, the contractor shall submit the following documentation to the Contracting Officer:

(1) Documentation to verify that contractor has established a relationship with an appropriate Institutional Review Board ("cognizant IRB"). An appropriate IRB is one that is located within the United States and within the community in which the human subjects research will be conducted;

(2) Documentation to verify that the cognizant IRB possesses a valid registration with the United States Department of Health and Human Services' Office for Human Research Protections ("OHRP");

(3) Documentation to verify that contractor has a valid Federal-wide Assurance (FWA) issued by OHRP.

(e) Prior to starting any research involving human subjects, the contractor shall submit appropriate documentation to the Contracting Officer for institutional review and approval. This documentation may include:

(1) Copies of the human subjects research protocol, all questionnaires, surveys, advertisements, and informed consent forms approved by the cognizant IRB;

(2) Documentation of approval for the human subjects research protocol, questionnaires, surveys, advertisements, and informed consent forms by the cognizant IRB;

(3) Documentation of continuing IRB approval by the cognizant IRB at appropriate intervals as designated by the IRB, but not less than annually; and/or

(4) Documentation to support an exemption for the project from the Common Rule [*Note:* this option is not available for activities that fall under 45 CFR Part 46 Subpart C].

(f) In addition, if the contractor modifies a human subjects research protocol, questionnaire, survey, advertisement, or informed consent form approved by the cognizant IRB, the contractor shall submit a copy of all modified material along with documentation of approval for said modification by the cognizant IRB to the Contracting Officer for institutional review and approval. The contractor shall not implement any IRB approved-modification without written approval by the Contracting Officer.

(g) No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged to the project, until the Contracting Officer approves the required appropriate documentation in writing.

(End of provision)

1352.235–71 Protection of human subjects—exemption.

As prescribed in 48 CFR 1335.006(b), insert the following clause:

PROTECTION OF HUMAN SUBJECTS (DATE)

(a) Contractor has satisfied the requirements set forth in solicitation #_____, related to the Protection of Human Subjects in research. The Government has determined that the research involving human subjects to be conducted under this contract is exempt from the requirements of the Common Rule for the Protection of Human Subjects. The exemption memorandum executed by the Government and the attachments are hereby incorporated by reference into this contract. If contractor uses an informed consent form for the exempt research, contractor must use the informed consent form contained in the attachments in its conduct of research involving human subjects under this contract.

(b) If the conditions upon which the exemption is based should change in any way, contractor shall immediately notify the Contracting Officer in writing of the specified change. The Government will review the change and make a determination as to whether the change requires a change to the exemption approval. Contractor shall not proceed until notified in writing of the Contracting Officer's approval. Contractor shall obtain prior written approval from the Contracting Officer for any change to the existing human subjects protocol or informed consent form before proceeding.

(c) No other research involving human subjects is permitted under this award unless expressly authorized in writing by the Contracting Officer. Such writing will specify the details of the approved research involving human subjects and will be incorporated by reference into this contract.

(d) The Federal Policy for the Protection of Human Subjects (the "Common Rule"), adopted by the Department of Commerce at 15 CFR Part 27, requires contractors to maintain appropriate policies and procedures for the protection of human subjects in research. The Common Rule defines a "human subject" as a living individual about whom an investigator conducting research obtains data through intervention or interaction with the individual, or identifiable private information. The term "research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

(e) The Common Rule also sets forth categories of research that may be considered exempt from this policy. These categories may be found at 15 CFR 27.101(b).

(f) In the event the human subjects research involves pregnant women, prisoners, or children, contractor is also required to follow the guidelines set forth at 45 CFR Part 46 Subpart B, C and D, as appropriate, for the protection of members of a protected class.

(g) Should additional research involving human subjects be required under the contract, prior to beginning such research, contractor shall submit the following documentation to the Contracting Officer:

(1) Documentation to verify that contractor has established a relationship with an appropriate Institutional Review Board ("cognizant IRB"). An appropriate IRB is one that is located within the United States and within the community in which the human subjects research will be conducted;

(2) Documentation to verify that the cognizant IRB is registered with the United States Department of Health and Human Services' Office for Human Research Protections ("OHRP") and is designated as contractor's cognizant IRB;

(3) Documentation to verify that contractor has a valid Federal-wide Assurance (FWA) issued by OHRP; or

(4) Documentation necessary to support a determination that the research is exempt from the requirements of the Common Rule for the Protection of Human Subjects.

(h) Prior to starting any additional research involving human subjects, the contractor shall submit appropriate documentation to the Contracting Officer for institutional review and approval or exemption determination. This documentation may include:

(1) Copies of the human subjects research protocol, all questionnaires, surveys, advertisements, and informed consent forms approved by the cognizant IRB;

(2) Documentation of approval for the human subjects research protocol, questionnaires, surveys, advertisements, and informed consent forms by the cognizant IRB;

(3) Documentation of continuing IRB approval by the cognizant IRB at appropriate intervals as designated by the IRB, but not less than annually; and/or

(4) Documentation to support an exemption for the project from the Common Rule [*Note:* this option is not available for activities that fall under 45 CFR Part 46 Subpart C].

(i) In addition, if the contractor modifies a human subjects research protocol, questionnaire, survey, advertisement, or informed consent form approved by the cognizant IRB, the contractor shall submit a copy of all modified material along with documentation of approval for said modification by the cognizant IRB to the Contracting Officer for institutional review and approval. The contractor may not implement any IRB approved modification without written approval by the Contracting Officer.

No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged to the project, until the Contracting Officer approves the required appropriate documentation in writing.

(End of clause)

1352.235–72 Protection of human subjects—institutional approval.

As prescribed in 48 CFR 1335.006(c), insert the following clause:

PROTECTION OF HUMAN SUBJECTS—INSTITUTIONAL APPROVAL (DATE)

(a) This contract/order includes non-exempt human subjects research that must be conducted pursuant to the requirements of the Federal Policy for the Protection of Human Subjects (the "Common Rule"), adopted by the Department of Commerce at 15 CFR Part 27. Contractor has submitted documentation establishing review and approval of the human subjects research protocol, including all informed consent forms, advertisements, and other recruitment materials, by a qualified Institutional Review Board (IRB) that has a current Federal-wide Assurance (FWA) issued by the Department of Health and Human Services (DHHS).

(b) By accepting this contract/order, the contractor certifies the accuracy of the documentation provided to its cognizant IRB and to the Government in support of the human subjects research specified therein. Based upon the contractor's documentation, and following the Government institutional review thereof, the following specific involvement of human subjects in research is hereby approved by the Contracting Officer:

Name of IRB: _____
(IRB # _____)
Title of IRB Protocol: _____
Recruiting Letter Approval Date (if appropriate): _____
Consent Form Approval Date: _____
Assurance of Compliance Number: _____

(c) Unless incorporated by written contract modification approved by the Contracting Officer, no other involvement of human subjects in research under this contract may be undertaken or conducted, or costs incurred and/or charged to the project, except as specified in the study plan reviewed and approved by the cognizant IRB and Government. Therefore, if the contractor modifies a human subjects research protocol, advertisement, or informed consent form approved by the cognizant IRB, contractor shall submit a copy of all modified material, along with documentation of approval for said modification by the cognizant IRB, to the Contracting Officer for agency institutional review and approval. Contractor may not implement any IRB-approved modification without written approval by the Contracting Officer.

Documentation of continuing IRB approval is required each year by the renewal date assigned by the cognizant IRB. Documentation of continuing IRB approval must be submitted to the Government for review and approval as soon as it occurs. Continuing approval of the human subjects research must be obtained from the cognizant IRB and provided to the Government until the research is completed or terminated. The contractor may proceed with previously approved human subjects research, if any, under this contract while the Government is conducting continuing review and approval of the human subjects research protocol. In the event that the Government determines, during the course of its review, that the human subjects research in this contract is not in compliance with the regulations set forth at 15 CFR Part 27, or this contract, the Contracting Officer may take the appropriate enforcement action, including disallowing costs, suspending or terminating the human subjects protocol or the contract, by notifying the contractor in writing.

(d) It is incumbent upon contractor to ensure that continuing IRB review approval occurs in accordance with 15 CFR Part 27. In the event that continuing review approval does not occur as set forth by 15 CFR Part 27, contractor is to notify the Contracting Officer immediately.

(e) Contractor must report all adverse events to the cognizant IRB and to the Contracting Officer. In the event that adverse events are reported to the cognizant IRB and the Contracting Officer, the Government may suspend this contract pending a full review of the adverse event by the cognizant IRB.

(f) If the conditions upon which IRB approval is based should change in any way, contractor shall immediately notify the Contracting Officer, in writing, of the specified change.

(g) Failure to comply with this contract clause will be considered material noncompliance with the contract, and the Contracting Officer may take appropriate enforcement action, including disallowing costs, suspension or termination of the contract.

(End of clause)

1352.235–73 Research involving human subjects—after initial contract award.

As prescribed in 48 CFR 1335.006(d), insert the following clause:

RESEARCH INVOLVING HUMAN SUBJECTS—AFTER INITIAL CONTRACT AWARD (DATE)

(a) No research involving human subjects is currently included in this contract/task order, and no research involving human subjects is permitted under this contract/task order unless expressly authorized, in writing, by the Contracting Officer.

(b) The Federal Policy for the Protection of Human Subjects (the "Common Rule"), adopted by the Department of Commerce at 15 CFR Part 27, requires that contractors maintain appropriate policies and procedures for the protection of human subjects in research. The Common Rule defines a "human subject" as a living individual about whom an investigator conducting research obtains data through intervention or interaction with the individual, or identifiable private information. The term "research" means a systematic investigation, including research, development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

(c) The Common Rule also sets forth categories of research that may be considered exempt from this policy. These categories are specified at 15 CFR 27.101(b).

(d) In the event that human subjects research involves pregnant women, prisoners, or children, the contractor is also required to follow the guidelines set forth at 45 CFR Part 46 Subparts B, C and D, as appropriate, for the protection of members of a protected class.

(e) Should research involving human subjects become necessary for carrying out this contract/task order, prior to undertaking or conducting such human subjects research, contractor shall submit the following documentation to the Contracting Officer:

(1) Documentation to verify that contractor has established a relationship with an appropriate Institutional Review Board ("cognizant IRB"). An appropriate IRB is one that is located within the United States and within the community in which the human subjects research will be conducted;

(2) Documentation to verify that the cognizant IRB is registered with the United States Department of Health and Human Services' Office for Human Research Protections ("OHRP");

(3) Documentation to verify that contractor has a valid Federal-wide Assurance (FWA) issued by the OHRP.

(f) Prior to starting any research involving human subjects, contractor shall submit appropriate documentation to the Contracting Officer for Government institutional review and approval. This documentation may include:

(1) Copies of the human subjects research protocol, advertisements, recruitment material, and informed consent forms approved by the cognizant IRB;

(2) Documentation of approval for the human subjects research protocol, advertisements, recruitment material, and informed consent forms by the cognizant IRB;

(3) Documentation of continuing IRB approval by the cognizant IRB at appropriate intervals as designated by the IRB, but not less than annually; and/or

(4) Documentation to support an exemption for the project from the Common Rule [*Note:* this option is not available for activities that fall under 45 CFR Part 46 Subpart C].

(g) In addition, if contractor modifies a human subjects research protocol, advertisement, recruitment material, or informed consent form approved by the cognizant IRB, contractor shall submit a copy of all modified material, along with documentation of approval for said modification by the cognizant IRB, to the Contracting Officer for Agency institutional review and approval. Contractor may not implement any IRB-approved modification without written approval by the Contracting Officer.

(h) No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged to the project, until the Contracting Officer approves the required appropriate documentation in writing.

(End of clause)

1352.237–70 Security processing requirements—high or moderate risk contracts.

As prescribed in 48 CFR 1337.110–70 (b), insert the following clause:

SECURITY PROCESSING REQUIREMENTS—HIGH OR MODERATE RISK CONTRACTS (DATE)

(a) Investigative Requirements for High and Moderate Risk Contracts. All contractor (and subcontractor) personnel proposed to be employed under a High or Moderate Risk contract shall undergo security processing by the Department's Office of Security before being eligible to work on the premises of any Department of Commerce owned, leased, or controlled facility in the United States or overseas, or to obtain access to a Department of Commerce IT system. All Department of Commerce security processing pertinent to this contract will be conducted at no cost to the contractor. The level of contract risk will determine the type and scope of such processing, as noted below.

(1) Investigative requirements for Non-IT Service Contracts are:

(i) High Risk—Background Investigation (BI).

(ii) Moderate Risk—Moderate Background Investigation (MBI).

(2) Investigative requirements for IT Service Contracts are:

(i) High Risk IT—Background Investigation (BI).

(ii) Moderate Risk IT—Background Investigation (BI).

(b) In addition to the investigations noted above, non-U.S. citizens must have a pre-appointment check that includes an Immigration and Customs Enforcement agency check.

(c) Additional Requirements for Foreign Nationals (Non-U.S. Citizens). To be employed under this contract within the United States, non-U.S. citizens must have:

(1) Official legal status in the United States;

(2) Continuously resided in the United States for the last two years; and

(3) Obtained advance approval from the servicing Security Officer of the contracting operating unit in consultation with the DOC Office of Security (OSY) headquarters. (OSY routinely consults with appropriate agencies regarding the use of non-U.S. citizens on contracts and can provide up-to-date information concerning this matter.)

(d) Security Processing Requirement. Processing requirements for High and Moderate Risk Contracts are as follows:

(1) The contractor must complete and submit the following forms to the Contracting Officer's Representative (COR):

(i) Standard Form 85P (SF–85P), Questionnaire for Public Trust Positions;

(ii) FD–258, Fingerprint Chart with OPM's designation in the ORI Block; and

(iii) Credit Release Authorization.

(2) The Sponsor will ensure that these forms have been properly completed, initiate the CD–254, Contract Security Classification Specification, and forward the documents to the cognizant Security Officer.

(3) Upon completion of security processing, the Office of Security, through the servicing Security Officer and the Sponsor, will notify the contractor in writing of an individual's eligibility to be provided access to a Department of Commerce facility or Department of Commerce IT system.

(4) Security processing shall consist of limited personal background inquiries pertaining to verification of name, physical description, marital status, present and former residences, education, employment history, criminal record, personal references, medical fitness, fingerprint classification, and other pertinent information. For non-U.S. citizens, the Sponsor must request an Immigration and Customs Enforcement agency check. It is the option of the Office of Security to repeat the security processing on any contract employee at its discretion.

(e) Notification of Disqualifying Information. If the Office of Security receives disqualifying information on a contract employee, the COR will be notified. The Sponsor, in coordination with the Contracting Officer, will immediately remove the contract employee from duties requiring access to Departmental facilities or IT systems. Contract employees may be barred from working on the premises of a facility for any of the following:

(1) Conviction of a felony crime of violence or of a misdemeanor involving moral turpitude;

(2) Falsification of information entered on security screening forms or on other documents submitted to the Department;

(3) Improper conduct once performing on the contract, including criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government, regardless of whether the conduct was directly related to the contract;

(4) Any behavior judged to pose a potential threat to Departmental information systems, personnel, property, or other assets.

(f) Failure to comply with security processing requirements may result in termination of the contract or removal of contract employees from Department of Commerce facilities or denial of access to IT systems.

(g) Access to National Security Information. Compliance with these requirements shall not be construed as providing a contract employee clearance to have access to national security information.

(h) The contractor shall include the substance of this clause, including this paragraph, in all subcontracts.

(End of clause)

1352.237–71 Security processing requirements—low risk contracts.

As prescribed in 48 CFR 1337.110–70(c), insert the following clause:

SECURITY PROCESSING REQUIREMENTS—LOW RISK CONTRACTS (DATE)

(a) Investigative Requirements for Low Risk Contracts. All contractor (and subcontractor) personnel proposed to be employed under a Low Risk contract shall undergo security processing by the Department's Office of Security before being eligible to work on the premises of any Department of Commerce owned, leased, or controlled facility in the United States or overseas, or to obtain access to a Department of Commerce IT system. All Department of Commerce security processing pertinent to this contract will be conducted at no cost to the contractor.

(b) Investigative requirements for Non-IT Service Contracts are:

(1) Contracts more than 180 days—National Agency Check and Inquiries (NACI).

(2) Contracts less than 180 days—Special Agency Check (SAC).

(c) Investigative requirements for IT Service Contracts are:

(1) Contracts more than 180 days—National Agency Check and Inquiries (NACI).

(2) Contracts less than 180 days—National Agency Check and Inquiries (NACI).

(d) In addition to the investigations noted above, non-U.S. citizens must have a background check that includes an Immigration and Customs Enforcement agency check.

(e) Additional Requirements for Foreign Nationals (Non-U.S. Citizens). Non-U.S. citizens (lawful permanent residents) to be employed under this contract within the United States must have:

(1) Official legal status in the United States;

(2) Continuously resided in the United States for the last two years; and

(3) Obtained advance approval from the servicing Security Officer in consultation with the Office of Security headquarters.

(f) DOC Security Processing Requirements for Low Risk Non-IT Service Contracts. Processing requirements for Low Risk non-IT Service Contracts are as follows:

(1) Processing of a NACI is required for all contract employees employed in Low Risk non-IT service contracts for more than 180 days. The Contracting Officer's Representative (COR) will invite the prospective contractor into e-QIP to complete the SF–85. The contract employee must also complete fingerprinting.

(2) Contract employees employed in Low Risk non-IT service contracts for less than 180 days require processing of Form OFI–86C Special Agreement Check (SAC), to be processed. The Sponsor will forward a completed Form OFI–86C, FD–258, Fingerprint Chart, and Credit Release Authorization to the servicing Security Officer, who will send the investigative packet to the Office of Personnel Management for processing.

(3) Any contract employee with a favorable SAC who remains on the contract over 180 days will be required to have a NACI conducted to continue working on the job site.

(4) For Low Risk non-IT service contracts, the scope of the SAC will include checks of the Security/Suitability Investigations Index (SII), other agency files (INVA), Defense Clearance Investigations Index (DCII), FBI Fingerprint (FBIF), and the FBI Information Management Division (FBIN).

(5) In addition, for those individuals who are not U.S. citizens (lawful permanent residents), the Sponsor may request a Customs Enforcement SAC on Form OFI–86C, by checking Block #7, Item I. In Block 13, the Sponsor should enter the employee's Alien Registration Receipt Card number to aid in verification.

(6) Copies of the appropriate forms can be obtained from the Sponsor or the Office of Security. Upon receipt of the required forms, the Sponsor will forward the forms to the servicing Security Officer. The Security

Officer will process the forms and advise the Sponsor and the Contracting Officer whether the contract employee can commence work prior to completion of the suitability determination based on the type of work and risk to the facility (*i.e.*, adequate controls and restrictions are in place). The Sponsor will notify the contractor of favorable or unfavorable findings of the suitability determinations. The Contracting Officer will notify the contractor of an approved contract start date.

(g) Security Processing Requirements for Low Risk IT Service Contracts. Processing of a NACI is required for all contract employees employed under Low Risk IT service contracts.

(1) Contract employees employed in all Low Risk IT service contracts will require a National Agency Check and Inquiries (NACI) to be processed. The Contracting Officer's Representative (COR) will invite the prospective contractor into e-QIP to complete the SF–85. Fingerprints and a Credit Release Authorization must be completed within three working days from start of work, and provided to the Servicing Security Officer, who will forward the investigative package to OPM.

(2) For Low Risk IT service contracts, individuals who are not U.S. citizens (lawful permanent residents) must undergo a NACI that includes an agency check conducted by the Immigration and Customs Enforcement Service. The Sponsor must request the ICE check as a part of the NAC.

(h) Notification of Disqualifying Information. If the Office of Security receives disqualifying information on a contract employee, the Sponsor and Contracting Officer will be notified. The Sponsor shall coordinate with the Contracting Officer for the immediate removal of the employee from duty requiring access to Departmental facilities or IT systems. Contract employees may be barred from working on the premises of a facility for any of the following reasons:

(1) Conviction of a felony crime of violence or of a misdemeanor involving moral turpitude.

(2) Falsification of information entered on security screening forms or of other documents submitted to the Department.

(3) Improper conduct once performing on the contract, including criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government regardless of whether the conduct was directly related to the contract.

(4) Any behavior judged to pose a potential threat to Departmental information systems, personnel, property, or other assets.

(i) Failure to comply with security processing requirements may result in termination of the contract or removal of contract employees from Department of Commerce facilities or denial of access to IT systems.

(j) Access to National Security Information. Compliance with these requirements shall not be construed as providing a contract employee clearance to have access to national security information.

(k) The contractor shall include the substance of this clause, including this paragraph, in all subcontracts.

(End of clause)

1352.237–72 Security processing requirements—national security contracts.

As prescribed in 48 CFR 1337.110–70(d), use the following clause:

SECURITY PROCESSING REQUIREMENTS—NATIONAL SECURITY CONTRACTS (DATE)

(a) Security Investigative Requirements for National Security Contracts. National Security Contracts require contractor employees to gain access to national security information in the performance of their work. Regardless of the contractor employees' location, appropriate security access and fulfillment of cleared facility requirements, as determined by the National Industrial Security Program (NISP) Operation Manual must be met. All contractors are subject to the appropriate investigations indicated below and may be granted appropriate security access by the Office of Security based on favorable results. No national security material or documents shall be removed from a Department of Commerce facility. The circumstances of the work performance must allow the Department of Commerce to retain control over national security information and keep the number of contract personnel with access to the information to a minimum.

(b) All employees working on Special or Critical Sensitive contracts require an updated personnel security background investigation every five (5) years. Employees on Non-Critical Sensitive contracts will require an updated personnel security background investigation every ten (10) years.

(c) Security Procedures. Position sensitivity/risk assessments must be conducted on all functions that are performed under the contract. Risk assessments for contractor employees are determined in the same manner as assessment of those functions performed by government employees. The Contracting Officer and Contracting Officer's Representative should determine the level of sensitivity or risk with the assistance of the servicing Security Officer.

(1) Contractor employees working on National Security Contracts must have a completed investigation and be granted an appropriate security level clearance by the Office of Security before start of work.

(2) The Contracting Officer's Representative must send the contract employee's existing security clearance information, if applicable, or appropriate investigative request package, to the servicing Security Officer, who will review and forward it to the Office of Security.

(3) The Office of Security must confirm that contract employees have the appropriate security clearance before starting any work under a National Security Contract.

(d) Security Forms Required. For Critical-Sensitive positions with Top Secret access, Critical-Sensitive positions with Secret access, and Non-Critical Sensitive positions with Secret or Confidential access, the following forms are required:

(1) Form SF–86, Questionnaire for National Security Positions, marked "CON" in Block 1, Position Title, to distinguish it as a contractor case;

(2) Form FD–258, Fingerprint Chart, with OPM's designation in the ORI Block; and

(3) Credit Release Authorization Form.

(e) Contracting Officer's Representative Responsibilities are:

(1) Coordinate submission of a proper investigative request package with the servicing Security Officer, the Contracting Officer, and the contractor.

(2) Review the request package for completeness, ensuring that the subject of each package is identified as a contract employee, the name of the contractor is identified, and that each package clearly indicates the contract sensitivity designation.

(3) Send the request package to the servicing Security Officer for investigative processing.

(f) Servicing Security Officer Responsibilities are:

(1) Review the package for completeness.

(2) Ensure that the forms are complete and contain all the pertinent information necessary to request the background investigation.

(3) Forward the request for investigation to the Defense Investigative Service Coordinating Office (DISCO).

(4) Maintain records of contractor personnel in their units subject to the NISP.

(5) Ensure that all contractor personnel have been briefed on the appropriate procedures for handling and safeguarding national security information.

(g) The contractor shall include the substance of this clause, including this paragraph, in all subcontracts.

(End of clause)

1352.237–73 Foreign national visitor and guest access to departmental resources.

As prescribed in 48 CFR 1337.110–70 (e), insert the following clause:

FOREIGN NATIONAL VISITOR AND GUEST ACCESS TO DEPARTMENTAL RESOURCES (DATE)

(a) The contractor shall comply with the provisions of Department Administrative Order 207–12, Foreign National Visitor and Guest Access Program; Bureau of Industry and Security Export Administrative Regulations Part 734, and [insert operating unit counsel specific procedures]. The contractor shall provide the Government with notice of foreign nationals requiring access to any Department of Commerce facility or through a Department of Commerce IT system.

(b) The contractor shall identify each foreign national who requires access to any Departmental resources, and shall provide all requested information in writing to the Contracting Officer's Representative.

(c) The contractor shall include the substance of this clause, including this paragraph, in all subcontracts.

(End of clause)

1352.237–74 Progress reports.

As prescribed in 48 CFR 1337.110–71(a), insert the following clause:

PROGRESS REPORTS (DATE)

The contractor shall submit, to the Government, a progress report every _____ [insert time period] month(s) after the effective date of the contract, and every _____ [insert time period] thereafter during the period of performance. The contractor shall deliver progress reports that summarize the work completed during the performance period, the work forecast for the following period, and state the names, titles and number of hours expended for each of the contractor's professional personnel assigned to the contract, including officials of the contractor. The report shall also include any additional information—including findings and recommendations—that may assist the Government in evaluating progress under this contract. The first report shall include a detailed work outline of the project and the contractor's planned phasing of work by reporting period.

(End of clause)

1352.237–75 Key personnel.

As prescribed in 48 CFR 1337.110–71(b), insert the following clause:

KEY PERSONNEL (DATE)

(a) The contractor shall assign to this contract the following key personnel:

(Name) (Position Title)

(Name) (Position Title)

(b) The contractor shall obtain the consent of the Contracting Officer prior to making key personnel substitutions. Replacements for key personnel must possess qualifications equal to or exceeding the qualifications of the personnel being replaced, unless an exception is approved by the Contracting Officer.

(c) Requests for changes in key personnel shall be submitted to the Contracting Officer at least 15 working days prior to making any permanent substitutions. The request should contain a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. The Contracting Officer will notify the contractor within 10 working days after receipt of all required information of the decision on substitutions. The contract will be modified to reflect any approved changes.

(End of clause)

1352.239–70 Software license addendum.

As prescribed in 48 CFR 1339.107, insert the following clause:

SOFTWARE LICENSE ADDENDUM (DATE)

(a) This Addendum incorporates certain terms and conditions relating to Federal procurement actions. The terms and conditions of this Addendum take precedence over the terms and conditions contained in any license agreement or other contract documents entered into between the parties.

(b) Governing Law: Federal procurement law and regulations, including the Contract Disputes Act, 41 U.S.C. Section 601 *et. seq.*, and the Federal Acquisition Regulation (FAR), govern the agreement between the parties. Litigation arising out of this contract may be filed only in those fora that have jurisdiction over Federal procurement matters.

(c) Attorney's Fees: Attorney's fees are payable by the Federal government in any action arising under this contract only pursuant to the Equal Access in Justice Act, 5 U.S.C. Section 504.

(d) No Indemnification: The Federal government will not be liable for any claim for indemnification; such payments may violate the Anti-Deficiency Act, 31 U.S.C. Section 1341(a).

(e) Assignment: Payments may only be assigned in accordance with the Assignment of Claims Act, 31 U.S.C. Section 3727, and FAR Subpart 32.8, "Assignment of Claims."

(f) Invoices: Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. Section 3903) and Office of Management and Budget (OMB) Circular A–125, Prompt Payment.

(g) Patent and Copyright Infringement: Patent or copyright infringement suits brought against the United States as a party may only be defended by the U.S. Department of Justice (28 U.S.C. Section 516).

(h) Renewal of Support after Expiration of this Award: Service will not automatically renew after expiration of the initial term of this agreement.

(i) Renewal may only occur in accord with (1) the mutual agreement of the parties; or (2) an option renewal clause allowing the Government to unilaterally exercise one or more options to extend the term of the agreement.

(End of clause)

1352.239–71 Electronic and information technology.

As prescribed in 48 CFR 1339.270(a), insert the following provision:

ELECTRONIC AND INFORMATION TECHNOLOGY (DATE)

(a) To be considered eligible for award, offerors must propose electronic and information technology (EIT) that meet the applicable Access Board accessibility standards at 36 CFR 1194 designated below:

_____ 1194.21 Software applications and operating systems

_____ 1194.22 Web-based intranet and internet information and applications

_____ 1194.23 Telecommunications products

_____ 1194.24 Video and multimedia products

_____ 1194.25 Self-contained, closed products

_____ 1194.26 Desktop and portable computers

_____ 1194.31 Functional performance criteria

_____ 1194.41 Information, documentation and support

(b) The standards do not require the installation of specific accessibility-related software or the attachment of an assistive technology device, but merely require that the EIT be compatible with such software and devices so that it can be made accessible if so required by the agency in the future.

(c) Alternatively, offerors may propose products and services that provide equivalent facilitation. Such offers will be considered to have met the provisions of the Access Board standards for the feature or components providing equivalent facilitation. If none of the offers that meet all applicable provisions of the standards could be accepted without imposing an undue burden on the agency or component, or if none of the offerors propose products or services that fully meet all of the applicable Access Board's provisions, those offerors whose products or services meet some of the applicable provisions will be considered eligible for award. Awards will not be made to an offeror meeting all or some of the applicable Access Board provisions if award would impose an undue burden upon the agency.

(d) Offerors must submit representation information concerning their products by completing the VPAT template at *http://www.Section508.gov*.

(End of clause)

1352.239–72 Security requirements for information technology resources.

As prescribed in 48 CFR 1339.270(b), insert the following clause:

SECURITY REQUIREMENTS FOR INFORMATION TECHNOLOGY RESOURCES (DATE)

(a) *Applicability.* This clause is applicable to all contracts that require contractor electronic access to Department of Commerce sensitive non-national security or national security information contained in systems, or administrative control of systems by a contractor that process or store information that directly supports the mission of the Agency.

(b) *Definitions.* For purposes of this clause, the term "Sensitive" is defined by the guidance set forth in the Computer Security Act of 1987 (Pub. L. 100–235), including the following definition of the term:

(1) Sensitive information is " * * * any information, the loss, misuse, or unauthorized access to, or modification of which could adversely affect the national interest or the, conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (The Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy."

(2) For purposes of this clause, the term "National Security" is defined by the guidance set forth in:

(i) The DOC IT Security Program Policy and Minimum Implementation Standards, Section 4.3.

(ii) The DOC Security Manual, Chapter 18.

(iii) Executive Order 12958, as amended, Classified National Security Information.

Classified or national security information is information that has been specifically authorized to be protected from unauthorized disclosure in the interest of national defense or foreign policy under an Executive Order or Act of Congress.

(3) Information technology resources include, but are not limited to, hardware, application software, system software, and information (data). Information technology services include, but are not limited to, the management, operation (including input, processing, transmission, and output), maintenance, programming, and system administration of computer systems, networks, and telecommunications systems.

(c) The contractor shall be responsible for implementing sufficient Information Technology security, to reasonably prevent the compromise of DOC IT resources for all of the contractor's systems that are interconnected with a DOC network or DOC systems that are operated by the contractor.

(d) All contractor personnel performing under this contract and contractor equipment used to process or store DOC data, or to connect to DOC networks, must comply with the requirements contained in the DOC *Information Technology Management Handbook* (*see* DOC, Office of the Chief Information Officer Web site), or equivalent/more specific agency or operating unit counsel guidance as specified immediately hereafter [insert agency or operating unit counsel specific guidance, if applicable].

(e) Contractor personnel requiring a user account for access to systems operated by the contractor for DOC or interconnected to a DOC network to perform contract services shall be screened at an appropriate level in accordance with Commerce Acquisition Manual 1337.70, *Security Processing Requirements for Service Contracts.*

(f) Within 5 days after contract award, the contractor shall certify in writing to the COR that its employees, in performance of the contract, have completed initial IT security orientation training in DOC IT Security policies, procedures, computer ethics, and best practices, in accordance with *DOC IT Security Program Policy,* chapter 15, section 15.3. The COR will inform the contractor of any other available DOC training resources. Annually thereafter the contractor shall certify in writing to the COR that its employees, in performance of the contract, have completed annual refresher training as required by section 15.4 of the *DOC IT Security Program Policy.*

(g) Within 5 days of contract award, the contractor shall provide the COR with signed acknowledgement of the provisions as contained in Commerce Acquisition Regulation (CAR), 1352.209–72, *Restrictions Against Disclosures.*

(h) The contractor shall afford DOC, including the Office of Inspector General, access to the contractor's and subcontractor's facilities, installations, operations, documentation, databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection, investigation, and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality of DOC data or to the function of computer systems operated on behalf of DOC, and to preserve evidence of computer crime.

(i) For all contractor-owned systems for which performance of the contract requires interconnection with a DOC network on which DOC data will be stored or processed, the contractor shall provide, implement, and maintain a System Accreditation Package in accordance with the *DOC IT Security Program Policy.* Specifically, the contractor shall:

(1) Within 14 days after contract award, submit for DOC approval a System Certification Work Plan, including project management information (at a minimum the tasks, resources, and milestones) for the certification effort, in accordance with *DOC IT Security Program Policy* and [Insert agency or operating unit counsel specific guidance, if applicable]. The Certification Work Plan, approved by the COR, in consultation with the DOC IT Security Officer, or Agency/operating unit counsel IT Security Manager/Officer, shall be incorporated as part of the contract and used by the COR to monitor performance of certification activities by the contractor of the system that will process DOC data or connect to DOC networks. Failure to submit and receive approval of the Certification Work Plan may result in termination of the contract.

(2) Upon approval, follow the work plan schedule to complete system certification activities in accordance with DOC *IT Security Program Policy* Section 6.2, and provide the COR with the completed System Security Plan and Certification Documentation Package portions of the System Accreditation Package for approval and system accreditation by an appointed DOC official.

(3) Upon receipt of the Security Assessment Report and Authorizing Official's written accreditation decision from the COR, maintain the approved level of system security as documented in the Security Accreditation Package, and assist the COR in annual assessments of control effectiveness in accordance with DOC *IT Security Program Policy,* Section 6.3.1.1.

(j) The contractor shall incorporate this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(End of clause)

1352.242–70 Postaward conference.

As prescribed in 48 CFR 1342.503–70, insert the following provision:

POSTAWARD CONFERENCE (DATE)

A postaward conference with the successful offeror may be required. If required, the Contracting Officer will contact the contractor within 10 days of contract award to arrange the conference.

(End of clause)

1352.245–70 Government furnished property.

As prescribed in 48 CFR 1345.107–70, insert the following clause:

GOVERNMENT FURNISHED PROPERTY (DATE)

The Government will provide the following item(s) of Government property to the contractor . The contractor shall be accountable for, and have stewardship of, the property in the performance of this contract. This property shall be used and maintained by the contractor in accordance with provisions of the "Government Property" clause included in this contract.

Item No.	Description	Quantity	Delivery date	Property/Tag No. (if applicable)
.....	.....	.....	.....	.....

(End of clause)

1352.246–70 Place of acceptance.

As prescribed in 1346.503, insert the following clause:

PLACE OF ACCEPTANCE (DATE)

(a) The Contracting Officer or the duly authorized representative will accept supplies and services to be provided under this contract.

(b) The place of acceptance will be:

_____

_____

_____

(End of clause)

1352.270–70 Period of performance.

As prescribed in 48 CFR 1370.101, insert the following clause:

PERIOD OF PERFORMANCE (DATE)

(a) The base period of performance of this contract is from _____ through _____. If an option is exercised, the period of performance shall be extended through the end of that option period.

(b) The option periods that may be exercised are as follows:

Period	Start date	End date
Option I	.....	.....
Option II	.....	.....
Option III	.....	.....
Option IV	.....	.....

(c) The notice requirements for unilateral exercise of option periods are set out in FAR 52.217–9.

(End of clause)

1352.270–71 Pre-bid/pre-proposal conference and site visit.

As prescribed in 48 CFR 1370.102, insert the following provision:

PRE-BID/PRE-PROPOSAL CONFERENCE AND SITE VISIT (DATE)

(a) The Government is planning a pre-proposal conference, during which potential contractors may obtain a better understanding of the work required.

(b) Offerors are encouraged to submit all questions in writing at least [____] days prior to the conference. Questions will be considered at any time prior to, or during, the conference; however, offerors will be asked to confirm verbal questions in writing. Subsequent to the conference, an amendment to the solicitation containing an abstract of the questions and the Government's answers, and a list of attendees, will be made publicly available.

(c) In order to facilitate conference preparations, contact the person identified in [Block __] on Standard Form [__] of this solicitation to make arrangements for security processing for entry of attendees into the Government facility.

(d) In no event shall failure to attend the pre-proposal conference constitute grounds supporting a protest or contract claim.

(e) Offerors are cautioned that, notwithstanding any remarks, clarifications, or responses provided at the conference, all terms and conditions of the solicitation remain unchanged unless they are changed by written amendment. It is the responsibility of each offeror, prior to submitting a proposal, to seek clarification of any perceived ambiguity in the solicitation or created by an amendment of the solicitation.

(f) The pre-proposal conference will be held:

Date: _____

Time: _____

Location: _____

[Instructions: If the conference also includes a site or equipment inspection visit, insert the following paragraph]:

(g) During the conference, an opportunity to visit the site of the work, and, if applicable, inspect equipment on which maintenance or repairs are to be performed will be offered to attendees.

(h) Offerors are expected to satisfy themselves regarding all conditions that may affect the work required or the cost of contract performance. In no event shall failure to inspect the site and/or equipment constitute grounds for any protest or contract claim.

(End of clause)

1352.271–70 Inspection and manner of doing work.

As prescribed in 48 CFR 1371.101, insert the following clause:

INSPECTION AND MANNER OF DOING WORK (DATE)

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

(b) Unless otherwise specifically provided for in the contract, all operational practices of the contractor and all workmanship and material, equipment and articles used in the performance of work shall be in accordance with American Bureau of Shipping "Rules for Building and Classing Steel Vessels", U.S. Coast Guard Marine Engineering Regulations and Material Specifications (46 CFR Subchapter F), U.S. Coast Guard Electrical Engineering Regulations (46 CFR Subchapter J), and U.S. Public Health Service "Handbook on Sanitation of Vessel Construction", in effect at the time of the contract award; and the best commercial maritime practices, except where military specifications are specified, in which case such standards of material and workmanship shall be followed.

(c) All material and workmanship shall be subject to inspection and test at all times during the contractor's performance of the work to determine their quality and suitability for the purpose intended and compliance with the contract. In case any material or workmanship furnished by the contractor is found to be defective prior to redelivery of the vessel, or not in accordance with the requirements of the contract, the Government shall have the right prior to redelivery of the vessel to reject such material or workmanship, and to require its correction or replacement by the contractor at the contractor's cost and expense. This Government right is in addition to its rights under any Guarantee clause in this contract. If the contractor fails to proceed promptly with the replacement or correction of such material or workmanship, as required by the Contracting Officer, the Government may, by contract or otherwise, replace or correct such material or workmanship and charge to the contractor the excess cost to the Government. The contractor shall provide and maintain an inspection system acceptable to the Government covering the work specified in the contract. Records of all inspection work by the contractor shall be kept complete and available to the Government during the performance of the contract and for a period of two (2) years after delivery of the vessel to the Government.

(d) No welding, including tack welding and brazing, shall be permitted in connection with repairs, completions, alterations, or addition to hulls, machinery or components of vessels unless the welder is, at the time, qualified to the standards established by the U.S. Coast Guard, the American Bureau of Shipping, or the Department of the Navy. The welder's qualifications shall be appropriate for the particular service application, filler material type, position of welding, and welding process involved in the work being undertaken. A welder may be required to re-qualify if the Contracting Officer believes there is a reasonable doubt concerning the welder's ability. Welders' qualifications for this purpose shall be governed by the U.S. Coast Guard Marine Engineering Regulations and Material Specifications (46 CFR Subchapter F). When a welding process other than manual shielded arc is proposed or required, the contractor or fabricator shall submit procedure qualification tests for approval prior to production welding. Procedure qualification tests shall be conducted in accordance with the United States Coast Guard Marine Engineering Regulations and Material Specifications (46 CFR Subchapter F).

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

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

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

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

(i) The Government does not guarantee the correctness of the dimensions, sizes, and shapes shown in any sketches, drawings, plans or specifications prepared or furnished by the Government. Prior to submitting an offer, it is the responsibility of the bidder/

offeror to verify the dimensions, sizes, and shapes in materials provided by the Government. Where practical, the Government will make the vessel available for inspection prior to bid opening or the date for receipt of proposals. If the contractor, as a result of inspection or otherwise, discovers any error in the sketches, drawings, plans or specifications, it shall immediately inform the Contracting Officer of the error and proceed in accord with instructions received from the Contracting Officer. The Government is not liable for any claims or charges resulting from additional work performed by the contractor as a result of a patent ambiguity in the sketches, drawings, plans or specifications that was not brought to the attention of the Contracting Officer. The contractor shall be responsible for the correctness of the shape, sizes and dimensions of parts furnished by the contractor under the contract.

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

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

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

(m)(1) Unless otherwise stated in the contract, the contractor shall notify the COR at least 72 hours in advance:

(i) Prior to starting inspections or tests; and

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

(2) Such notification shall be provided either verbally or in writing at the discretion of the COR.

(End of clause)

1352.271–71 Method of payment and invoicing instructions for ship repair.

As prescribed in 48 CFR 1371.102, insert the following clause:

METHOD OF PAYMENT AND INVOICING INSTRUCTIONS FOR SHIP REPAIR (DATE)

(a) The Government will make payment under this contract based on a percentage of completion. The contractor may invoice for the percentage completed for each work item as work progresses. The amount invoiced shall be calculated based on prices stated in the Schedule, as follows: A work item may not be invoiced until the percentage complete reaches 25 percent. Future invoices for that work item have no limitation as to the percentage of completion required before invoicing, but in no event may invoices be submitted more frequently than every 2 weeks, or for amounts less than $10,000, unless it is the final payment. The minimum percentage of completion (25%) to be reached prior to billing each work item may be waived by the Contracting Officer for large dollar work items on a case-by-case basis.

(b) Invoices submitted by the contractor which are deemed not proper, in accordance with FAR 52.232–25, will be returned. Invoices shall include:

(1) Name and Address of the contractor;

(2) DUNS Number;

(3) Invoice Date;

(4) Contract Number/Modification Number;

(5) CLIN/Work Item Number, to include: Description, Quantity, Unit of Measure, Unit Price and Extended Price;

(6) Shipping and Payment Terms; and,

(7) Contractor Point of Contact, including: Name, Title, Phone Number, and Mailing Address;

(8) The percentage of completion for each CLIN/work item identified;

(9) Name of the Contracting Officer ;

(10) Ship name;

(11) The overall percentage and dollar amount previously billed, currently billed and unbilled.

(c) When invoicing for changed work, the contractor shall identify it as a contract change and shall identify the modification authorizing the change, and the CLIN/Work Item associated with the change.

(d) All items of work invoiced under this contract will be verified and confirmed by the Contracting Officer's Representative as accurate and complete and approved by the designated billing office before payment will be made.

(e) Mail the original invoice to: [insert]

(f) The contractor's final invoice submitted under the contract must be marked as follows: "THIS INVOICE CONSTITUTES THE FINAL INVOICE—UPON PAYMENT OF THIS INVOICE NO OTHER MONIES ARE DUE UNDER CONTRACT NUMBER _____." (To be assigned at contract award)

(End of clause)

1352.271–72 Additional Item Requirements (AIR)—growth work

As prescribed in 48 CFR 1371.103, insert the following clause:

ADDITIONAL ITEM REQUIREMENTS (AIR)—GROWTH WORK (DATE)

(a) This clause applies to Additional Item Requirements (AIR), also known as growth and emergent work ordered by the Contracting Officer pursuant to the Changes—Ship Repair clause or mutually agreed upon by the parties. The contractor shall perform AIR at the labor billing rates designated in the Schedule, as described in paragraph (c) of this clause. The AIR handling fee designated in the Schedule shall be the sole fee used for direct material purchases and subcontractor handling. The estimated quantity of labor hours and handling fees represent the Government's best estimate for growth that may be required throughout the contract performance period. All growth work shall be paid at the prices stated in the Schedule.

(b) The contractor shall take into account the potential for ordering all estimated AIR quantities in developing the Production Schedule. The ordering of any portion of the AIR quantities does not in itself warrant an extension to the original contract completion date; however, for planning purposes, the Government anticipates ordering AIR in accordance with the following schedule:

(1) No more than 75% of the hours during the first half of the contract period of performance.

(2) No more than 50% of the hours during the third quarter of the contract period of performance.

(3) No more than 30% of the hours during the fourth quarter of the contract period of performance.

(c) The AIR labor rate shall be a flat, hourly rate to cover the entire effort and shall be burdened to include:

(1) Direct production labor hour functions only. Direct production labor hours are hours of skilled labor at the journeyman level expended in direct production. Direct production is defined as work performed by a qualified craftsman that is directly related to the alteration, modification, or repair of the item or system identified as needing alteration, modification, or repair. The following functions are identified as direct production: Abrasive Cleaning/Water Blasting, Tank Cleaning, Welding, Burning, Brazing, Blacksmithing, Machining (inside and outside), Carpentry, Electrical/Electronic Work, Crane Operation, Shipfitting, Lagging/Insulating, Painting, Boilermaking, Pipe Fitting, Engineering (Production), Sheetmetal Work, Staging/Scaffolding, and Rigging.

(2) Non-production labor hours (whether charged directly or indirectly by contractor's accounting system) shall be for labor in support of production functions. For purposes of this clause, support functions are defined as functions that do not directly contribute to the alteration, modification, or repair of the item or system identified as needing alteration, modification, or repair. Necessary support functions should be priced into the burdened rate for production labor hours. Examples of support functions include: Testing, Quality Assurance (inspection), Engineering (support), Planning (including involvement of craft foreman/journeyman in planning a task), Estimating (including determination of necessary materials and equipment needed to perform a task), Material Handling, Set-up (moving tools and equipment from shop to ship to perform a task), Fire Watch, General Labor (including general support of journeyman tasks), Cleaning (including debris pickup and removal), Surveying, Security, Transportation, Supervision, and Lofting (sail/pattern making).

(d) Additional Item Requirements do not include replacement work performed pursuant to the Inspection and Manner of Doing Work or Guarantees clauses.

(e) It is the Government's intention to award any growth work identified during the repair to the contractor, if a fair and reasonable price can be negotiated for such

work, based upon Schedule rates. If a fair and reasonable price cannot be negotiated, the Government may, at its discretion, obtain services outside of the contract. Such services may be performed while the ship is undergoing repair in the contractor's facility pursuant to the Access to Vessels clause.

(f) The contractor shall submit to the Contracting Officer the following information in all AIR proposals:

(1) Number of labor hours estimated; broken down by specific direct production labor category.

(2) Material estimates, individually broken out and priced. When requested by the Contracting Officer, material quotes shall be provided.

(3) Subcontractor estimates, individually broken out and priced along with the actual subcontractor quotes. The requirement to submit subcontractor quotes may be waived if deemed appropriate by the Contracting Officer.

(4) Material/subcontractor handling fee and the basis for the fee.

(g) The contractor shall not be entitled to payment for any hours ordered pursuant to this clause until such time as a written contract modification is executed.

(End of clause)

1352.271–73 Schedule of work.

As prescribed in 48 CFR 1371.104, insert the following clause.

SCHEDULE OF WORK (DATE)

(a) Notwithstanding other requirements specified in this contract, the contractor shall provide to the Contracting Officer and COR the following documents within five (5) working days of the vessel's arrival at the contractor's facility:

(1) Production Schedule.

(2) Work Package Network.

(3) Total Manpower Loading Curve.

(4) Trade Manning Curves.

(5) Subcontracting List.

(b) The Production Schedule shall list the earliest, latest, and scheduled start and completion date for each work item awarded and shall identify the critical path. The Work Package Network shall show the work items, milestones, key events, and activities and shall clearly identify the critical path. The Total Manpower Loading Curve shall show the required manning for the duration of the contract. The Trade Manning Curves shall show the required manning for each trade for the duration of the contract. The Subcontracting List shall show work items, milestones, key events, and activities to be accomplished by subcontractors.

(c) Additional Item Requirements ordered and agreed upon, whether or not yet formalized via a change order (contract modification), shall be added to the Production Schedule, Trade Manning Curves, and Subcontracting List and submitted to the Contracting Officer and COR at each weekly Progress Meeting. Any anticipated or unanticipated deviation (greater than five (5) calendar days) from the Production Schedule shall be immediately brought to the attention of the Contracting Officer and COR.

(d) Any unauthorized deviation in the Production Schedule which results in a delay in the completion of work on a vessel past the established performance period completion date may entitle the Government to remedies for late performance, including, but not limited to, liquidated damages.

(End of clause)

1352.271–74 Foreseeable cost factors pertaining to different shipyard locations.

As prescribed in 48 CFR 1371.105, insert the following provision:

FORESEEABLE COST FACTORS PERTAINING TO DIFFERENT SHIPYARD LOCATIONS (DATE)

(a) The Contracting Officer will evaluate certain foreseeable costs that will vary with the location of the commercial shipyard to be used by bidders/offerors under this solicitation. Costs will be calculated based on the bidder's/offeror's shipyard location and these costs will be added, for the purposes of evaluation only, to the bidder's/offeror's overall price.

(b) These elements of foreseeable costs consist of the following:

(1) *Vessel Transit:* (i) Vessel delivery costs will be based on one round trip from the vessel's homeport of _____ to the contractor's facility at a cruising speed of ____ knots. Distances will be based on the NOAA publication, "Distance Between U.S. Ports".

(ii) Daily vessel operational cost to navigate the vessel between its homeport and the contractor's offered place of performance is $_____ per day. The number of days to transit to the contractor's offered place of performance from the vessel's homeport will be multiplied by the per-day operational cost.

(iii) No operational costs will be applied if the ship can be delivered to the contractor's facility from its homeport within eight (8) hours port-to-port. If the delivery time exceeds eight (8) hours, but is less than 24 hours, it will be considered one full day. Any fraction of subsequent day(s) will be considered as a full day.

(2) *Shore Leave Costs:* If the contractor's facility is outside of a 50-mile radius of the vessel's homeport—

(i) An assessment of $_____ for each 15-day period or portion thereof, beginning with the vessel's departure from the homeport and concluding with the vessel's return to homeport.

(ii) There will be an additional transportation cost for _____ vessel crew members for one (1) round trip(s) between the contractor's offered place of performance and the vessel's homeport at the cost of coach-type airfare.

(3) *Travel and Per Diem Costs:* If the contractor's facility is outside of a 50-mile radius of the vessel's homeport—

(i) There will be a transportation cost for one (1) Contracting Officer's Representative (COR) for ____ round trip(s) between the contractor's offered place of performance and the COR's official duty station at the cost of coach-type airfare.

(ii) There will be a per diem expense for ____ calendar days to support one (1) COR while in the city of the place of contract performance, to be determined in accordance with the Joint Federal Travel Regulations (JFTR). The cost of car rental for the estimated performance period will also be included.

(iii) There will be a transportation cost for one (1) Contracting Officer for ____ round trip(s) between the Contracting Officer's official duty station and the contractor's offered place of performance at the cost of coach-type airfare, plus per diem expenses and a rental car.

(End of clause)

1352.271–75 Delivery and shifting of the vessel.

As prescribed in 48 CFR 1371.106, insert the following clause:

DELIVERY AND SHIFTING OF THE VESSEL (DATE)

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

(b) Whether the specified location of performance is the contractor's own facility or any other authorized facility, it shall be understood to mean the fairway of the facility. The contractor shall provide necessary tugs and pilot services to move the vessel from the fairway to the pier or dock, and, upon completion of all work, from the pier or dock to the fairway of the facility.

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

(End of clause)

1352.271–76 Performance.

As prescribed in 48 CFR 1371.107, insert the following clause:

PERFORMANCE (DATE)

(a) The contractor shall not commence work until a notice to proceed has been issued by the Contracting Officer.

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

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

(1) Make available, at the facility, to personnel of the vessel while in drydock or on a marine railway, sanitary facilities adequate for the number of personnel using them and acceptable to the Contracting Officer;

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

(3) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the contractor of any of the vessel's machinery,

equipment or fittings, including, but not limited to, winches, pumps, riggings, or pipe lines; and

(4) Furnish suitable offices, office equipment and telephones at or near the site of the work as the Contracting Officer reasonably requires for personnel designated by the Government.

(d) Except as otherwise provided in the contract, the contractor shall furnish all necessary material, labor, supervision, services, equipment, tools, supplies, power, accessories, facilities, and other things and services necessary for accomplishing the work.

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

(End of clause)

1352.271–77 Delays.

As prescribed in 48 CFR 1371.108, insert the following clause:

DELAYS (DATE)

When, during the performance of this contract, the contractor is required to delay the work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, fueling, embarking or debarking of passengers or loading or discharging of cargo, and the contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment may be made in the contract. Any such request for equitable adjustment shall be asserted in writing as soon as practicable after the delay or disruption, but not later than the day of final payment under the contract.

(End of clause)

1352.271–78 Minimization of delay due to Government furnished property.

As prescribed in 48 CFR 1371.109, insert the following clause:

MINIMIZATION OF DELAY DUE TO GOVERNMENT FURNISHED PROPERTY (DATE)

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

(1) Subject to adjustment as provided in paragraph (b) of this clause, the Government shall deliver each item of Government furnished property to the contractor on or before the date specified in the contract or, if later, in sufficient time for the contractor to meet the contract performance period.

(2) The Government may forego furnishing any item of Government property to the contractor. In that event, the contractor shall prepare the vessel in terms of piping, wiring, structure, foundation, ventilation, and any other pre-installation requirements of the item, so that the work on the vessel may continue without delay and disruption resulting from the absence of the item. If the Government does not furnish an item designated as Government furnished property, the contract price may be adjusted accordingly.

(b) The delivery or performance dates for the supplies or services to be furnished by the contractor under this contract are based upon the expectation that Government furnished property suitable for use (except for such property furnished "as is") will be delivered to the contractor at the time stated in the specification or, if not so stated, in sufficient time to enable the contractor to meet such delivery or performance dates. If the Government furnished property is not furnished in the time stated in the contract, or, if a date is not specified, and the late delivery does not give the contractor sufficient time to enable the contractor to meet required contract delivery or performance dates, the contractor shall notify the Government in writing of the late delivery. Notification shall include cost and schedule impacts, including delays and disruptions to schedules. This notification shall be submitted as soon as practical or known.

(c) The provisions in subsection (b) of this clause and in FAR 52.245–1, if applicable, provide the exclusive remedies to the contractor resulting from delay in delivery of Government furnished property or delivery of such property in a condition not suitable for its intended use.

(End of clause)

1352.271–79 Liability and insurance.

As prescribed in 48 CFR 1371.110, insert the following clause:

LIABILITY AND INSURANCE (DATE)

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

(b) The contractor shall be responsible for and make good at its own cost and expense any and all loss of or damage of whatsoever nature to the vessel (or part thereof), its equipment, movable stores and cargo, and Government-owned material and equipment for the repair, completion, alteration of or addition to the vessel in the possession of the contractor, whether at the plant or elsewhere, arising or growing out of the performance of the work, except where the contractor can affirmatively show that such loss or damage was due to causes beyond the contractor's control, was proximately caused by the fault or negligence of agents or employees of the Government, or which loss or damage the contractor by exercise of reasonable care was unable to prevent. However, the contractor shall not be responsible for any such loss or damage discovered after redelivery of the vessel unless the loss or damage is discovered within 90 days after redelivery of the vessel and loss or damage is affirmatively shown to be the result of the fault or negligence of the contractor. To induce the contractor to perform the work for the compensation provided, it is specifically agreed that the contractor's aggregate liability on account of loss of or damage to the vessel (or part thereof), its equipment, movable stores and cargo and Government-owned materials and equipment, shall in no event exceed the sum of $1,000,000.00. As to the contractor, the Government assumes the risk of loss or damage to the Government-owned vessel (or part thereof), its equipment, movable stores and cargo and said Government-owned materials and equipment in excess of $1,000,000.00. This assumption of risk includes but is not limited to loss or damage from negligence of whatsoever degree of the contractor's servants, employees, agents or subcontractors, but specifically excludes loss or damage from willful misconduct or lack of good faith on the part of contractor's personnel, who have supervision or direction of all or substantially all of the contractor's business, or all or substantially all of the contractor's operation at any one plant. However, as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the contractor, and the contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action. Nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the contractor, nor shall any person (except the contractor) be or become entitled thereby to proceed directly against the Government, or join the Government as a co-defendant in any action against the contractor brought to determine the contractor's liability, or for any other purpose.

(c) The contractor indemnifies and holds harmless the Government, its agencies and instrumentalities, and the vessel against all suits, actions, claims, costs or demands (including without limitation, suits, actions, claims, costs or demands resulting from death, personal injury and property damage) to which the Government, its agencies and instrumentalities, or the vessel may be subject or put by reason of damage or injury (including death) to the property or person of

anyone other than the Government, its agencies, instrumentalities and personnel, or the vessel, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the contractor, or any subcontractor, its or their servants, agents or employees; provided that the contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of $1,000,000.00 on account of any one accident or occurrence in respect of any one vessel. Such indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death, personal injury or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. Any new equipment warranties that extend beyond the 90 days after redelivery of the vessel shall be assigned to the Government upon redelivery of the vessel. With respect to any such suits, actions, claims, costs or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the contractor shall be as determined by other provisions of this contract and by law; provided that such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the contractor's indemnity as provided herein.

(d) The contractor shall, at its own expense, procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause. In addition, the contractor shall at its own expense procure and thereafter maintain such ship repairer's legal liability insurance as may be necessary to insure the contractor against its liability as ship repairer in the amount of $1,000,000.00, or the value of the vessel as determined by the Contracting Officer, whichever is the lesser, with respect to each vessel on which work is performed. The contractor shall cause the Government to be named as an additional insured under any and all liability insurance policies, however, at the discretion of the Contracting Officer, such insurance need not be procured whenever the job order requires work on parts of a vessel only and the work is to be performed at a plant other than the site of the vessel. Further, the contractor shall procure and maintain in force Worker's Compensation Insurance (or its equivalent) covering its employees engaged in the work and shall ensure the procurement and maintenance of such insurance by all subcontractors engaged in the work. The contractor shall provide evidence of insurance as required by the Government.

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

(f) As soon as practicable after the occurrence of any loss or damage, the risk of which the Government has assumed, written notice of the damage shall be given by the contractor to the Contracting Officer. The notice shall contain full particulars of the loss or damage. If claim is made or suit is brought thereafter against the contractor as the result or because of such event, the contractor shall immediately deliver to the Government every demand, notice, summons or other process received by it or its representatives. The contractor shall cooperate with the Government, and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence; obtaining the attendance of witnesses, and other assistance required in the conduct of suits. The Government shall pay to the contractor the expense, other than the cost of maintaining the contractor's usual organization, incurred in this assistance. Except at its own cost, the contractor shall not voluntarily make any payment, assume any obligation or incur any expense not imperative for the protection of the vessel or vessels at the time of the event.

(End of clause)

1352.271–80 Title.

As prescribed in 48 CFR 1371.111, insert the following clause:

TITLE (DATE)

(a) Title to all materials and equipment acquired, produced for, or allocated to the performance of this contract and incorporated in or placed on the vessel or any part thereof, shall vest in the Government.

(b) The contractor shall assume, without limitation, the risk of loss for any contractor-furnished materials and equipment until final acceptance by the Government of work performed under the contract.

(End of clause)

1352.271–81 Discharge of liens.

As prescribed in 48 CFR 1371.112, insert the following clause:

DISCHARGE OF LIENS (DATE)

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

(End of clause)

1352.271–82 Department of Labor occupational safety and health standards for ship repair.

As prescribed in 48 CFR 1371.113, insert the following clause:

DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIP REPAIR (DATE)

The contractor, in performance of all work under the contract, shall comply with the requirements of 29 CFR 1910.15. Nothing contained in this contract shall be construed as relieving the contractor from any obligations which it may have for compliance with the aforesaid regulations.

(End of clause)

1352.271–83 Government review, comment, acceptance and approval.

As prescribed in 48 CFR 1371.114, insert the following clause:

GOVERNMENT REVIEW, COMMENT, ACCEPTANCE AND APPROVAL (DATE)

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

(b) The Government shall respond to Condition Reports, as defined in the Specifications, within five (5) working days, unless the Government notifies the contractor that a longer period of time will be required. If the contractor requests a response in less than five (5) working days, the Government will attempt to accommodate the request, but does not guarantee a response in less than the time limits stated above.

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

(End of clause)

1352.271–84 Access to the vessel.

As prescribed in 48 CFR 1371.115, insert the following clause:

ACCESS TO THE VESSEL (DATE)

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

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

(End of clause)

1352.271–85 Documentation of requests for equitable adjustment.

As prescribed in 48 CFR 1371.116, insert the following clause:

DOCUMENTATION OF REQUESTS FOR EQUITABLE ADJUSTMENT (DATE)

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

(b) Whenever the contractor requests or proposes an equitable adjustment to the contract price for a change or an act or omission on the part of the Government, the request shall include a breakdown of the price adjustment in such form and supported by such reasonable detail as the Contracting Officer may request. As a minimum, the contractor shall provide a breakdown of direct labor hours, labor dollars, overhead, material, subcontracts, contingencies and profit for each change and a justification for any extension of the delivery date.

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

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

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

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

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

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

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

(ii) The calendar time period when disruption occurred, or will occur, illustrated via critical path analysis;

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

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

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

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

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

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

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

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

(10) At the time of agreement upon the price of the equitable adjustment, the contractor shall submit a signed Certificate of Current Cost or Pricing Data.

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

(End of clause)

1352.271–86 Lay days.

As prescribed in 48 CFR 1371.117, insert the following clause:

LAY DAYS (DATE)

(a) A lay day is defined as an additional day on dry dock or marine railway caused by a Government-issued change. Reimbursement for lay days shall be paid at the rate stated in the Schedule.

(b) No amount for lay day time shall be paid until all contract line items (including optional items) that require drydocking of the vessel have been completed. Lay days for work ordered pursuant to the Additional Item Requirements Clause shall not be compensable unless all dry dock work included in the contract line items is complete.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the contractor shall not be paid as lay day time. Days in which work is performed that are considered normal "non-work" days (weekends or holidays) shall not be paid as lay day time if the ship would have otherwise been in dry dock.

(d) Payment of lay day time shall constitute complete compensation for all costs associated with lay days except for costs directly related to the changed work.

(End of clause)

1352.271–87 Changes—ship repair.

As prescribed in 48 CFR 1371.118, insert the following clause:

CHANGES—SHIP REPAIR (DATE)

(a) The Contracting Officer may, at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract, in any one or more of the following:

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

(2) Method of shipment or packing;

(3) Place of performance of the work;

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

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

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract accordingly.

(c) The contractor must submit any proposal for adjustment under this clause within 5 days from the date of receipt of the written order. At the Contracting Officer's discretion, the 5-day period may be shortened. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the contractor's proposal includes the cost of property rendered obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

(End of clause)

1352.271–88 Guarantees.

As prescribed in 48 CFR 1371.119, insert the following clause:

GUARANTEES (DATE)

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

(b) The Government shall be entitled to rely upon any guarantee secured by the contractor or any sub-contractor covering work done or materials furnished which

exceeds the ____day period until its expiration.

(c) With respect to any individual work item identified and listed as incomplete at the redelivery of the vessel, the guarantee period shall run from the date of completion of such item.

(d) If and when practicable, the Government shall afford the contractor an opportunity to effect such corrections and repairs.

(1) If the Contracting Officer determines it is impracticable or is otherwise not advisable to return the vessel to the contractor, or the contractor fails to proceed promptly with any such repairs as directed by the Contracting Officer, the Contracting Officer may direct that the repairs be performed elsewhere, at the contractor's expense.

(2) Where corrections and repairs are to be made by other than the contractor due to nonreturn of the vessel to the contractor, the contractor's liability may be discharged by an equitable deduction in the price of the contract.

(e) The contractor's liability shall only extend for an additional ____ day guarantee period on those defects or deficiencies which it corrected. However, this clause does not limit the responsibility or relieve the liability of the contractor under the Liability and Insurance clause.

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

(g) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of the contract. If a defect or deficiency that exists at the time of redelivery of the vessel was not discovered by a reasonable inspection and is discovered after the expiration of the time frame stated in this clause, it is not subject to the time limitations stated in this clause.

(End of clause)

1352.271–89 Temporary services.

As prescribed in 48 CFR 1371.120, insert the following clause:

TEMPORARY SERVICES (DATE)

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

(b) If performance time is extended due to Government-caused delay, the contractor may request an equitable adjustment for providing temporary services at the rate stated in the Schedule.

(End of clause)

1352.271–90 Insurance requirements.

As prescribed in 48 CFR 1371.121, insert the following clause:

INSURANCE REQUIREMENTS (DATE)

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

(1) Ship contractor's legal liability insurance to insure the risks described in paragraph (b) of clause 1352.271–79. This insurance shall be for $1,000,000.00.

(2) Comprehensive general liability insurance and automobile insurance to insure the risks described in paragraph (c) of clause 1352.271–79. This insurance shall be for $1,000,000.00 on account of any one accident or occurrence with respect to each vessel, boat, and/or barge upon which work is performed. The contractor shall cause the Government to be named as an additional insured under any and all liability insurance policies.

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

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

(b) As evidence that it has obtained the insurance specified in paragraph (a) of this clause, the contractor shall furnish the Contracting Officer with a certificate or certificates executed by an agent of the insurer authorized to execute such certificates. Such certificates shall be furnished prior to commencement of the work. Each certificate shall state that (name of insurer) has insured (name of contractor) awarded contract number _____ for repair/alteration of (name of vessel) in accordance with the Liability and Insurance clause and the Insurance Requirements clause contained herein. Each certificate shall set forth that each policy of insurance represented thereby will expire on (date) and that each such policy contains the following clause:

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

(End of clause)

Subpart 1352.3—Provisions and Clauses Matrix

1352.301 Solicitation provisions and contract clauses (Matrix).

BILLING CODE 3510–03–P

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.201-70 Contracting Officer's Authority	1301.602-170	C	Y	G	R	R											
1352.201-71 Ratification Release	1301.602-3	C	N	H		A											
1352.201-72 Contracting Officer's Representative (COR)	1301.670-70	C	N	G	A	A											
1352.208-70 Restrictions on Printing and Duplicating	1308.802-70	C	Y	H	A	A											
1352.209-70 Potential Organizational Conflict of Interest	1309.507-1(a)	P	N	L	A												
Alternate I	1309.507-1(b)	P	N	L	A												
1352.209-71 Limitation of Future Contracting	1309.507-2(a)(1)	C	Y	H	A	A											
Alternate I	1309.507-2(a)(2)	C	Y	H	A	A											
Alternate II	1309.507-2(a)(3)	C	Y	H	A	A											

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
Alternate III	1309.507-2(a)(4)	C	Y	H	A	A											
Alternate IV	1309.507-2(a)(5)	C	Y	H	A	A											
Alternate V	1309.507-2(a)(6)	C	Y	H	A	A											
Alternate VI	1309.507-2(a)(7)	C	Y	H	A	A											
1352.209-72 Restrictions against Disclosure	1309.507-2(b)	C	Y	H						A							
1352.209-73 Compliance with the Laws	1309.507-2(c)	C	Y	H	R	R											
1352.209-74 Organizational Conflict of Interest	1309.507-2(d)	C	Y	H	R	R											
1352.209-75 Title 13 and Non-Disclosure Requirements	1309.507-2(e)	C	Y	H						A							
1352.213-70 Evaluation Utilizing Simplified Acquisition Procedures	1313.106-2-70	P	N	M								R					
1352.213-71 Instructions for Submitting Quotations Under the Simplified Acquisition Threshold - Non-Commercial	1313.302-1-70	P	N	L								A					

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.215-70 Proposal Preparation	1315.204-570(a)(1)	P	N	L	R												
1352.215-71 Instructions for Oral Presentations	1315.204-570(a)(2)	P	N	L	A												
1352.215-72 Inquiries	1315.204-570(a)(3)	P	N	L	O												
1352.215-73 Evaluation Quantities-Indefinite Quantity Contract	1315.204-570(b)(1)	P	Y	M	A				A								
1352.215-74 Best Value Evaluation	1315.204-570(b)(2)	P	N	M	A												
1352.215-75 Evaluation Criteria	1315.204-570(b)(2) 1315.204-570(b)(3)	P	N	M	A												
1352.215-76 Cost or Pricing Data	1315.204-570(b)(4)	P	Y	L	A												
1352.216-70 Estimated and Allowable Costs	1316.307 (a)	C	N	B										R			
1352.216-71 Level of Effort (Cost-Plus-Fixed-Fee, Term Contract)	1316.307 (b)	C	N	B										A			
1352.216-72 Determination of Award Fee	1316.405.2	C	N	B										A			

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.216-73 Distribution of Award Fee	1316.406	C	N	B										A			
1352.216-74 Task Orders	1316.501-2-70	C	Y	H				A									
1352.216-75 Minimum and Maximum Contract Amounts	1316.506(a)	C	N	B					R								
1352.216-76 Placement of Orders	1316.506(b)	C	N	G				R									
1352.216-77 Ceiling Price	1316.601-70 1316.602-70	C	N	B			R										
1352.219-70 Section 8(a) Direct Award	1319.811-3(a)	C	N	H	A	A											
1352.219-71 Notification to Delay Performance	1319.811-3(b)	C	Y	H	A	A											
1352.219-72 Notification of Competition Limited to Eligible 8(a) Concerns - Alternate III	1319.811-3(c)	C	N	H	A	A											
1352.227-70 Rights in Data, Assignment of Copyright	1327.404-4(a)	C	Y	H	A	A											
1352.228-70 Insurance Coverage	1328.310-70(a)	C	N	H	A	A											

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.228-71 Deductibles Under Required Insurance Coverage - Cost Reimbursement	1328.310-70(c)	C	Y	H										A			
1352.228-72 Deductibles Under Required Insurance Coverage - Fixed Price	1328.310-70(d)	C	Y	H									A				
1352.228-73 Loss of or Damage to Leased Aircraft	1328.310-70(e) 1328.310-70(f)	C	Y	H											A		
1352.228-74 Fair Market Value of Aircraft	1328.310-70(e) 1328.310-70(g)	C	N	H											A		
1352.228-75 Risk and Indemnities	1328.310-70(e) 1328.310-70(h)	C	Y	H											A		
1352.228-76 Approval of Group Insurance Plans	1328.310-70(i)	C	Y	H										R			
1352.231-70 Precontract Costs	1331.205-32	C	N	H										A			
1352.231-71 Duplication of Effort	1331.205-70	C	Y	H			A							A			
1352.233-70 Agency Protests	1333.103(a)	P	N	L	A												

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.233-71 GAO and Court of Federal Claims Protests	1333.104-70(a)	P	Y	L	A												
1352.235-70 Protection of Human Subjects	1335.006(a)	P	Y	L	A												
1352.235-71 Protection of Human Subjects - Exemption	1335.006(b)	C	N	H		A											
1352.235-72 Protection of Human Subjects - Institutional Approval	1335.006(c)	C	N	H		A											
1352.235-73 Research Involving Human Subjects - After Initial Contract Award	1335.006(d)	C	Y	H		A											
1352.237-70 Security Processing Requirements - High or Moderate Risk Contracts	1337.110-70(b)	C	Y	H						A							
1352.237-71 Security Processing Requirements - Low Risk Contracts	1337.110-70(c)	C	Y	H						A							
1352.237-72 Security Processing Requirements - National Security Contracts	1337.110-70(d)	C	Y	H						A							

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.237-73 Foreign National Visitor and Guest Access to Departmental Resources	1337.110-70(e)	C	Y	H						A							
1352.237-74 Progress Reports	1337.110-71(a)	C	N	G	A	A											
1352.237-75 Key Personnel	1337.110-71(b)	C	Y	H						A							
1352.239-70 Software License Addendum	1339.107	C	Y	H													A
1352.239-71 Electronic and Information Technology	1339.270(a)	P	Y	L	A												A
1352.239-72 Security Requirements for Information Technology Resources	1339.270(b)	C	Y	H						A							R
1352.242-70 Postaward Conference	1342.503-70	P	Y	L	A	A											
1352.245-70 Government Furnished Property	1345.107-70	C	N	G	A	A											
1352.246-70 Place of Acceptance	1346.503	C	Y	E	R	R											

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.270-70 Period of Performance	1370.101	C	N	F	A	A											
1352.270-71 Pre-Bid / Pre-Proposal Conference and Site Visit	1370.102	P	N	L	A												
1352.271-70 Inspection and Manner of Doing Work	1371.101	C	Y	H												R	
1352.271-71 Method of Payment and Invoicing Instructions for Ship Repair	1371.102	C	N	H												R	
1352.271-72 Additional Item Requirements (AIR) - Growth Work	1371.103	C	Y	H												R	
1352.271-73 Schedule of Work	1371.104	C	Y	H												R	
1352.271 -74 Foreseeable Cost Factors Pertaining to Different Shipyard Locations	1371.105	P	N	H												R	
1352.271-75 Delivery and Shifting of the Vessel	1371.106	C	Y	H												A	
1352.271-76 Performance	1371.107	C	Y	H												R	

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.271-77 Delays	1371.108	C	Y	H												R	
1352.271-78 Minimization of Delay Due to Government Furnished Property	1371.109	C	Y	H												R	
1352.271-79 Liability and Insurance	1371.110	C	Y	H												R	
1352.271-80 Title	1371.111	C	Y	H												R	
1352.271-81 Discharge of Liens	1371.112	C	Y	H												R	
1352.271-82 Department of Labor Occupational Safety and Health Standards for Ship Repair	1371.113	P	Y	H												A	
1352.271-83 Government Review, Comment, Acceptance and Approval	1371.114	C	Y	H												R	
1352.271-84 Access to the Vessel	1371.115	C	Y	H												R	
1352.271-85 Documentation of Requests for Equitable Adjustment	1371.116	C	Y	H												R	

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.271-86 Lay Days	1371.117	C	Y	H												R	
1352.271-87 Changes - Ship Repair	1371.118	C	Y	H												R	
1352.271-88 Guarantees	1371.119	C	N	H												R	
1352.271-89 Temporary Services	1371.120	C	Y	H												R	
1352.271-90 Insurance Requirements	1371.121	C	N	H												R	

BILLING CODE 3510–03–C

PART 1353—FORMS

Subpart 1353.1—General

Sec.
1353.100 Scope of subpart.
1353.107 Obtaining forms.

Subpart 1353.2—Prescription of Forms

1353.200 Scope of subpart.
1353.206 Competition requirements.

Subpart 1353.3—Illustration of Forms

353.300 Scope of subpart.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1353.1—General

1353.100 Scope of subpart.

This subpart prescribes DOC forms that are supplemental to those provided in FAR Part 53.

1353.107 Obtaining forms.

The DOC forms may be obtained from any DOC contracting office.

Subpart 1353.2—Prescription of Forms

1353.200 Scope of subpart.

This subpart prescribes or references DOC forms for use in acquisitions. Consistent with FAR 53.200, this subpart is arranged by subject matter, in the same order as and keyed to the parts of the CAR in which the form usage requirements are addressed.

1353.206 Competition requirements.

As prescribed in 48 CFR 1306.303–70, use Form CD–492, *Justification for Other Than Full and Open Competition,* to support the requirements under FAR Subpart 6.3 *(see Appendix A: Forms).*

1353.219 Small business programs.

Use Form CD–570, *Small Business Set-Aside Review,* to fulfill and document the requirements under FAR 19.5 *(see Appendix A: Forms).*

Subpart 1353.3—Illustration of Forms

1353.300 Scope of subpart.

DOC Forms will not be illustrated in this CAR. Persons wishing to obtain copies of DOC forms prescribed in the CAR may do so in accordance with 1353.107.

SUBCHAPTER I—DEPARTMENT SUPPLEMENTAL REGULATIONS

PART 1370—UNIVERSAL SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1370.1—Provisions and Clauses

Sec.
1370.101 Period of performance.
1370.102 Pre-bid/pre-proposal conference and site visit.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1370.1—Provisions and Clauses

1370.101 Period of performance.

Insert the clause 1352.270–70, *Period of Performance,* in all solicitations and contracts where a period of performance will be specified.

1370.102 Pre-bid/pre-proposal conference and site visit.

Insert provision 1352.270–71, *Pre-Bid/Pre-Proposal Conference and Site Visit,* in solicitations where a pre-proposal conference will be held. The provision is optional for construction and may be modified as necessary. The contracting officer shall include or delete the paragraph regarding site visits.

PART 1371—ACQUISITIONS INVOLVING SHIP CONSTRUCTION AND SHIP REPAIR

Subpart 1371.1—Provisions and Clauses

Sec.
1371.101 Inspection and manner of doing work.
1371.102 Method of payment and invoicing instructions for ship repair.
1371.103 Additional item requirements (AIR)—growth work.
1371.104 Schedule of work.
1371.105 Foreseeable cost factors pertaining to different shipyard locations.
1371.106 Delivery and shifting of the vessel.
1371.107 Performance.
1371.108 Delays.
1371.109 Minimization of delay due to government furnished property.
1371.110 Liability and insurance.
1371.111 Title.
1371.112 Discharge of liens.
1371.113 Department of Labor occupational safety and health standards for ship repair.
1371.114 Government review, comment, acceptance, and approval.
1371.115 Access to the vessel.
1371.116 Documentation of requests for equitable adjustment.
1371.117 Lay days.
1371.118 Changes—ship repair.
1371.119 Guarantees.
1371.120 Temporary services.
1371.121 Insurance requirements.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1371.1—Provisions and Clauses

1371.101 Inspection and manner of doing work.

Insert clause 1352.271–70, *Inspection and Manner of Doing Work,* in all solicitations and contracts for ship construction and ship repair.

1371.102 Method of payment and invoicing instructions for ship repair.

Insert clause 1352.271–71, *Method of Payment and Invoicing Instructions for Ship Repair,* in all solicitations and contracts for ship repair.

1371.103 Additional item requirements (AIR)—growth work.

Insert clause 1352.271–72, *Additional Item Requirements (AIR)—Growth Work,* in all solicitations and contracts for ship repair.

1371.104 Schedule of work.

Insert clause 1352.271–73, *Schedule of Work,* in all solicitations and contracts for ship repair.

1371.105 Foreseeable cost factors pertaining to different shipyard locations.

Insert provision 1352.271–74, *Foreseeable Cost Factors Pertaining to Different Shipyard Locations,* in all solicitations for ship repair.

1371.106 Delivery and shifting of the vessel.

Insert clause 1352.271–75, *Delivery and Shifting of the Vessel,* in all solicitations and contracts for ship repair to be performed at the contractor's facility.

1371.107 Performance.

Insert clause 1352.271–76, *Performance,* in all solicitations and contracts for ship construction and ship repair.

1371.108 Delays.

Insert clause 1352.271–77, *Delays,* in all solicitations and contracts for ship repair.

1371.109 Minimization of delay due to Government furnished property.

Insert clause 1352.271–78, *Minimization of Delay Due to Government Furnished Property,* in all solicitations and contracts for ship construction and ship repair.

1371.110 Liability and insurance.

Insert clause 1352.271–79, *Liability and Insurance,* in all solicitations and contracts for ship repair.

1371.111 Title.

Insert clause 1352.271–80, *Title,* in all solicitations and contracts for ship repair.

1371.112 Discharge of liens.

Insert clause 1352.271–81, *Discharge of Liens,* in all solicitations and contracts for ship construction and ship repair.

1371.113 Department of Labor occupational safety and health standards for ship repair.

Insert clause 1352.271–82, *Department of Labor Occupational Safety and Health Standards for Ship Repair,* in all solicitations and contracts for ship repair.

1371.114 Government review, comment, acceptance, and approval.

Insert clause 1352.271–83, *Government Review, Comment, Acceptance and Approval,* in all solicitations and contracts for ship construction and ship repair.

1371.115 Access to the vessel.

Insert clause 1352.271–84, *Access to the Vessel,* in all solicitations and contracts for ship construction and ship repair.

1371.116 Documentation of requests for equitable adjustment.

Insert clause 1352.271–85, *Documentation of Requests for Equitable Adjustment,* in all solicitations and contracts for ship construction and ship repair.

1371.117 Lay days.

Insert clause 1352.271–86, *Lay Days,* in all solicitations and contracts for ship repair.

1371.118 Changes—ship repair.

Insert clause 1352.271–87, *Changes—Ship Repair,* in all solicitations and contracts for ship repair.

1371.119 Guarantees.

Insert clause 1352.271–88, *Guarantees,* in all solicitations and contracts for ship construction and ship repair.

1371.120 Temporary services.

Insert clause 1352.271–89, *Temporary Services,* in all solicitations and contracts for ship repair.

1371.121 Insurance requirements.

Insert clause 1352.271–90, *Insurance Requirements,* in all solicitations and contracts for ship construction and ship repair.

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BILLING CODE 3510–03–P